

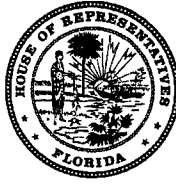
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# **State Administration Appropriations Committee**

**Tuesday, April 4, 2006  
4:00 p.m. – 6:00 p.m.  
or Upon Adjournment of the Fiscal Council  
Room 12 HOB**

**Allan G. Bense  
Speaker**

**Kimberly (Kim) Berfield  
Chair**



# **The Florida House of Representatives**

Fiscal Council

State Administration Appropriations Committee

**Allan G. Bense**  
Speaker

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## **Agenda**

**Tuesday, April 4, 2006**

**Time: 4:00 p.m. – 6:00 p.m.**

**or Upon Adjournment of the Fiscal Council**

**Location: Room 12 HOB**

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- I. Call to Order
- II. Roll Call
- III. Opening Remarks
- IV. Consideration of the following bill(s):
  - HB 159 CS by McInvale - Regulation of Real Estate Appraisers
  - HB 217 CS by Legg - Sinkhole Insurance
  - HB 489 CS by Legg - Electrical and Alarm System Contracting
  - HB 639 by Kyle - Building Designations
  - HB 825 CS by Altman - Financial Literacy Council
  - HB 1135 CS P by Hukill - Practice of Architecture and Interior Design
  - HB 7185 by Governmental Operations Committee - Procurement of Contractual Services by a State Agency
- V. Closing Remarks
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 159 CS                      Regulation of Real Estate Appraisers  
**SPONSOR(S):** McInvale and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> <i>SR</i>	<u>Belcher</u> <i>mwto</i>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate appraisers' statutes, part II of chapter 475, F.S.

The Appraisal Qualifications Board ("AQB") acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. A person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The bill requires the board to prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the AQB in order to be qualified as a "residential appraiser" or as a "general appraiser."

The bill specifies the duties for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision" and "training" and amends the definition of "supervisory appraiser." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill prohibits a supervising appraiser from being employed by a person who is in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a gradual phase out of this regulatory category. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category. The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to currently licensed individuals.

This bill does not appear to have a significant fiscal impact on state government.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Expand individual freedom - The bill prohibits a supervising appraiser from being employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Several themes are prevalent in the bill and are supported by various changes to statutory text.

##### **Compliance with changing federal standards**

##### Present Situation

The definitions section of part II of chapter 475, F.S., provides that an "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." The definition specifically states, "However, in order to be recognized in a federally related transaction, an appraisal report must be written."

"Federally related transaction" is defined as "any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser." Additionally, "appraisal foundation" or "foundation" is defined by statute to mean "the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois."

The Appraisal Qualifications Board ("AQB") is located within the Appraisal Foundation and acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. Therefore, a person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The AQB has adopted changes that will become effective January 1, 2008, to the minimum qualification criteria for appraisers.

##### Effect of proposed changes

In order to be qualified as a certified "residential appraiser" or as a "general appraiser," the bill requires the applicant to present evidence that he or she "has met the minimum education and experience requirements prescribed by rule of the board." The bill requires the board to "prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation." These provisions are designed to allow changes at the state level to reflect future changes in federal qualifications for licensure which will be based upon those already adopted by the AQB.

The bill increases the statutory number of classroom hours of academic courses that are required to be certified. The changes include an increase from 120 classroom hours to 200 for a residential appraiser and an increase from 180 classroom hours to 300 for a general appraiser. The bill also increases the number of hours for a trainee appraiser from 75 hours to 100.

### **Supervisor/trainee direct supervision requirements**

#### Present Situation

The current definition section of part II of chapter 475, F.S., defines "supervisory appraiser" to mean a licensed appraiser or a certified residential or general appraiser who directs the supervision of one or more registered "trainees." The definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit, by rule, the geographic area within which a supervisor may work. The terms "direct supervision" and "training" are not currently defined.

Section 475.6221, F.S., requires "the primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser."

#### Effect of proposed changes

The bill specifies requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision" and "training" and amends "supervisory appraiser." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill defines "direct supervision" as "the degree of supervision overseeing the work of a registered trainee appraiser" [allowing] "control over and detailed professional knowledge of the work being done." The definition continues and provides that "direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board."

The bill defines "training" to mean "the process of providing for and making available to a registered trainee appraiser, under direct supervision" [which is newly defined in the bill], "a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills as determined by rule of the board."

### **Supervisor/trainee business relationship restrictions**

#### Present Situation

In addition to the direct supervision requirements noted above, s. 475.6221, F.S., also requires that "a registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser."

#### Effect of proposed changes

The bill amends s. 475.6221, F.S., to prohibit a supervising appraiser to be employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

The bill also amends s. 475.612, F.S., to repeat the requirement that "a registered trainee appraiser may only receive compensation from his or her authorized certified or licensed appraiser."

### **Regulatory nomenclature**

## Present situation

Section 475.612, F.S., currently prohibits a person from using the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report "in connection with any federally related transaction" unless that person is certified, licensed, or registered by the DBPR.

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a phase out of this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued. Reference to the term license would continue until all licenses expire for failure to renew or are revoked under disciplinary proceedings. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category.

## Effect of proposed changes

The bill deletes the reference "in connection with any federally related transaction" and, as a result, the prohibition against using the specified titles of "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," would apply to all real estate appraisal transactions.

The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to the dwindling universe of these licensed practitioners. Effective July 1, 2006, an applicant must provide fingerprints in electronic format.

## C. SECTION DIRECTORY:

Section 1. Amends s. 475.611, F.S., relating to definitions; creates definitions for "direct supervision" and "training" and amends "supervisory appraiser."

Section 2. Amends s. 475.612, F.S., to address reporting and valuation services, as well as, the direct payment of compensation to certified or licensed appraisers.

Section 3. Amends s. 475.615, F.S., to revise qualifications for registration or certification.

Section 4. Amends s. 475.616, F.S., to correct references.

Section 5. Amends s. 475.617, F.S., to address education and experience requirements and to increase the required number of classroom hours.

Section 6. Creates s. 475.6171, F.S., to summarize the requirements for registration and certification.

Section 7. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisory appraiser.

Section 8. Amends s. 475.6222, F.S., to require a primary or secondary supervisor appraiser to provide training, in addition to direct supervision, to an appraiser trainee.

Section 9. Amends s. 475.623, F.S., to require registration of a firm or business name in addition to the location of their operations.

Section 10. Amends s. 475.624, F.S., to correct references.

Section 11. Provides an effective date of July 1, 2006, for the bill.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None anticipated.
2. Expenditures:  
None anticipated.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None
2. Expenditures:  
None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

There may be a minimal effect on how certain licensees structure their business entities.

### **D. FISCAL COMMENTS:**

There is no significant fiscal impact to the Department of Business and Professional Regulation.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill specifically authorizes rules to be adopted by the board to support: the definition of "direct supervision" and "training", s.475.611, F.S.; the implementation of changing federal guidelines, s.475.615 and s. 475.617, F.S.; and the documentation for qualifying to be registered or certified, 475.6171, F.S.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Business Regulation Committee adopted a strike all amendment on January 26, 2006, and passed the bill by a unanimous vote. The CS differs from the original bill as follows.



- The CS inserts the reference to “by rule” in several provisions to clarify rule authority of the board.
- It requires fingerprints to be submitted in electronic form starting on July 1, 2006.
- It increases the required number of classroom hours for a trainee, residential, and general appraiser.
- The CS corrects several references to the term license where the phasing out of this classification is appropriate.

The staff analysis reflects the CS.

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CHAMBER ACTION

The Business Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to regulation of real estate appraisers; amending s. 475.611, F.S.; revising and providing definitions; amending s. 475.612, F.S.; revising requirements relating to work performed by persons who are not certified, licensed, or registered; providing requirements relating to issuance of appraisal reports and compensation of appraisers, including trainees; amending s. 475.615, F.S.; removing obsolete language relating to qualifications for registration, licensure, or certification; revising education and experience requirements; amending s. 475.616, F.S.; removing obsolete language relating to examination requirements; amending s. 475.617, F.S.; revising the minimum and maximum course hour requirements for trainee appraiser registration; removing obsolete provisions establishing education and experience requirements for licensure as an appraiser; revising education and experience requirements for certification as a residential appraiser or general

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appraiser; requiring applicants for certification to maintain certain application documents; providing rulemaking authority; creating s. 475.6171, F.S.; providing for the issuance of registration and certification upon receipt of proper documentation; providing rulemaking authority; amending s. 475.6221, F.S.; prohibiting supervisory appraisers from certain employment; amending s. 475.6222, F.S.; requiring supervisory appraisers to provide direct training to registered trainee appraisers; amending s. 475.623, F.S.; requiring appraisers to furnish their firm or business name and any change in that name to the Department of Business and Professional Regulation; amending s. 475.624, F.S.; removing obsolete references; correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.--

(1) As used in this part, the term:

(a) "Appraisal" or "appraisal services" means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a

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disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

(b) "Appraisal Foundation" or "foundation" means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) "Appraisal report" means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

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(d) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's appraisal, appraisal report, or work.

(e) "Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

(f) "Appraiser" means any person who is a registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(g) "Board" means the Florida Real Estate Appraisal Board established under this section.

(h) "Certified general appraiser" means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(i) "Certified residential appraiser" means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(j) "Department" means the Department of Business and Professional Regulation.

(k) "Direct supervision" means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work

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being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(l)~~(k)~~ "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(m)~~(l)~~ "Licensed appraiser" means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(n)~~(m)~~ "Registered trainee appraiser" means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(o)~~(n)~~ "Supervisory appraiser" means a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the

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responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a licensed or certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(p) "Training" means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical appraisal skills as determined by rule of the board.

(q)~~(e)~~ "Uniform Standards of Professional Appraisal Practice" means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation.

(r)~~(p)~~ "Valuation services" means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(s)~~(q)~~ "Work file" means the documentation necessary to support an appraiser's analysis, opinions, and conclusions.

Section 2. Section 475.612, Florida Statutes, is amended to read:

475.612 Certification, licensure, or registration required.--

(1) A person may not use the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to

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that effect, or issue an appraisal report ~~in connection with any~~  
~~federally related transaction~~, unless such person is certified,  
licensed, or registered by the department under this part.

However, the work upon which an appraisal report is based may be  
performed by a person who is not a certified or licensed  
appraiser or registered trainee appraiser if the work report is  
supervised and approved, and the report is signed, by a  
certified or licensed appraiser who has full responsibility for  
all requirements of the report and valuation service. Only a  
certified or licensed appraiser may issue an appraisal report  
and receive direct compensation for providing valuation services  
for the appraisal report. A registered trainee appraiser may  
only receive compensation for appraisal services from her or his  
authorized certified or licensed appraiser.

(2) This section does not preclude a Florida licensed real  
estate broker, sales associate, or broker associate who is not a  
Florida certified or licensed real estate appraiser ~~or~~  
~~registered trainee real estate appraiser~~ from providing  
valuation services for compensation. Such persons may continue  
to provide valuation services for compensation so long as they  
do not represent themselves as certified, licensed, or  
registered under this part.

(3) This section does not apply to a real estate broker or  
sales associate who, in the ordinary course of business,  
performs a comparative market analysis, gives a price opinion,  
or gives an opinion of the value of real estate. However, in no  
event may this comparative market analysis, price opinion, or



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opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified or licensed appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report's content.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

Section 3. Section 475.615, Florida Statutes, is amended to read:

475.615 Qualifications for registration, ~~licensure~~, or certification.--

(1) Any person desiring to act as a registered trainee appraiser or as a ~~licensed or~~ certified appraiser must make

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219 application in writing to the department in such form and detail  
220 as the board shall prescribe. Each applicant must be at least 18  
221 years of age and hold a high school diploma or its equivalent.  
222 ~~At the time of application, a person must furnish evidence of~~  
223 ~~successful completion of required education and evidence of~~  
224 ~~required experience, if any.~~

225       (2) The board is authorized to waive or modify any  
226 education, experience, or examination requirements established  
227 in this part in order to conform with any such requirements  
228 established by the Appraisal Qualifications Board of the  
229 Appraisal Foundation ~~and recognized by the Appraisal~~  
230 ~~Subcommittee~~ or any successor body recognized by federal law,  
231 including any requirements adopted on February 20, 2004. The  
232 board shall implement this section by rule.

233       (3) Appropriate fees, as set forth in the rules of the  
234 board pursuant to s. 475.6147, and a fingerprint card must  
235 accompany all applications for registration or certification,  
236 ~~or licensure~~. The fingerprint card shall be forwarded to the  
237 Division of Criminal Justice Information Systems within the  
238 Department of Law Enforcement for purposes of processing the  
239 fingerprint card to determine if the applicant has a criminal  
240 history record. The fingerprint card shall also be forwarded to  
241 the Federal Bureau of Investigation for purposes of processing  
242 the fingerprint card to determine if the applicant has a  
243 criminal history record. The information obtained by the  
244 processing of the fingerprint card by the ~~Florida~~ Department of  
245 Law Enforcement and the Federal Bureau of Investigation shall be  
246 sent to the department for the purpose of determining if the

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applicant is statutorily qualified for registration ~~or~~  
certification, ~~or licensure~~. Effective July 1, 2006, an  
applicant must provide fingerprints in electronic format.

(4) In the event that the applicant is currently a  
registered trainee appraiser or a licensed or certified  
appraiser and is making application to obtain a different status  
of appraisal credential ~~licensure~~, should such application be  
received by the department within 180 days prior to through 180  
days after the applicant's scheduled renewal, the charge for the  
application shall be established by the rules of the board  
pursuant to s. 475.6147.

(5) At the time of filing a notarized application for  
registration, ~~licensure~~, or certification, the applicant must  
sign a pledge to comply with the Uniform Standards of  
Professional Appraisal Practice upon registration, ~~licensure~~, or  
certification, and must indicate in writing that she or he  
understands the types of misconduct for which disciplinary  
proceedings may be initiated. The application shall expire 1  
year after ~~from~~ the date received, ~~if the applicant for~~  
~~registration, licensure, or certification fails to take the~~  
~~appropriate examination.~~

(6) All applicants must be competent and qualified to make  
real estate appraisals with safety to those with whom they may  
undertake a relationship of trust and confidence and the general  
public. If any applicant has been denied registration,  
licensure, or certification, or has been disbarred, or the  
applicant's registration, license, or certificate to practice or  
conduct any regulated profession, business, or vocation has been

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275 | revoked or suspended by this or any other state, any nation, or  
276 | any possession or district of the United States, or any court or  
277 | lawful agency thereof, because of any conduct or practices which  
278 | would have warranted a like result under this part, or if the  
279 | applicant has been guilty of conduct or practices in this state  
280 | or elsewhere which would have been grounds for disciplining her  
281 | or his registration, license, or certification under this part  
282 | had the applicant then been a registered trainee appraiser or a  
283 | licensed or certified appraiser, the applicant shall be deemed  
284 | not to be qualified unless, because of lapse of time and  
285 | subsequent good conduct and reputation, or other reason deemed  
286 | sufficient, it appears to the board that the interest of the  
287 | public is not likely to be endangered by the granting of  
288 | registration, ~~licensure~~, or certification.

289 |       (7) No applicant seeking to become registered, ~~licensed~~,  
290 | or certified under this part may be rejected solely by virtue of  
291 | membership or lack of membership in any particular appraisal  
292 | organization.

293 |       Section 4. Section 475.616, Florida Statutes, is amended  
294 | to read:

295 |       475.616 Examination requirements.--To be ~~licensed or~~  
296 | certified as an appraiser, the applicant must demonstrate, by  
297 | passing a written examination, that she or he possesses:

298 |       (1) A knowledge of technical terms commonly used in real  
299 | estate appraisal.

300 |       (2) An understanding of the principles of land economics,  
301 | real estate appraisal processes, reliable sources of appraising  
302 | data, and problems likely to be encountered in the gathering,

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303 interpreting, and processing of data in carrying out appraisal  
304 disciplines.

305 (3) An understanding of the standards for the development  
306 and communication of real estate appraisals as provided in this  
307 part.

308 (4) An understanding of the types of misconduct for which  
309 disciplinary proceedings may be initiated against a licensed or  
310 certified appraiser, as set forth in this part.

311 (5) Knowledge of the theories of depreciation, cost  
312 estimating, methods of capitalization, and the mathematics of  
313 real estate appraisal ~~that are appropriate for the licensure or~~  
314 ~~certification for which application is made.~~

315 Section 5. Section 475.617, Florida Statutes, is amended  
316 to read:

317 475.617 Education and experience requirements.--

318 (1) To be registered as a trainee appraiser, an applicant  
319 must present evidence satisfactory to the board that she or he  
320 has successfully completed at least 100 ~~75~~ hours of approved  
321 academic courses in subjects related to real estate appraisal,  
322 which shall include coverage of the Uniform Standards of  
323 Professional Appraisal Practice from a nationally recognized or  
324 state-recognized appraisal organization, career center,  
325 accredited community college, college, or university, state or  
326 federal agency or commission, or proprietary real estate school  
327 that holds a permit pursuant to s. 475.451. The board may  
328 increase the required number of hours to not more than 125 ~~100~~  
329 hours. A classroom hour is defined as 50 minutes out of each 60-

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330 minute segment. Past courses may be approved on an hour-for-hour  
331 basis.

332 ~~(2) To be licensed as an appraiser, an applicant must~~  
333 ~~present evidence satisfactory to the board that she or he:~~

334 ~~(a) Has 2 years of experience in real property appraisal~~  
335 ~~as defined by rule.~~

336 ~~(b) Has successfully completed at least 90 classroom~~  
337 ~~hours, inclusive of examination, of approved academic courses in~~  
338 ~~subjects related to real estate appraisal, which shall include~~  
339 ~~coverage of the Uniform Standards of Professional Appraisal~~  
340 ~~Practice from a nationally recognized or state recognized~~  
341 ~~appraisal organization, career center, accredited community~~  
342 ~~college, college, or university, state or federal agency or~~  
343 ~~commission, or proprietary real estate school that holds a~~  
344 ~~permit pursuant to s. 475.451. The board may increase the~~  
345 ~~required number of hours to not more than 120 hours. A classroom~~  
346 ~~hour is defined as 50 minutes out of each 60 minute segment.~~  
347 ~~Past courses may be approved by the board and substituted on an~~  
348 ~~hour-for-hour basis.~~

349 ~~(2)(3)~~ To be certified as a residential appraiser, an  
350 applicant must present satisfactory evidence to the board that  
351 she or he has met the minimum education and experience  
352 requirements prescribed by rule of the board. The board shall  
353 prescribe by rule education and experience requirements that  
354 meet or exceed the following real property appraiser  
355 qualification criteria adopted on February 20, 2004, by the  
356 Appraisal Qualifications Board of the Appraisal Foundation:

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(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 ~~120~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National coverage of the Uniform Standards of Professional Appraisal Practice course from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. ~~The board may increase the required number of hours to not more than 165 hours.~~ A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

~~(3)-(4)~~ To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 ~~180~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a

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385   15-hour National coverage of the Uniform Standards of  
386   Professional Appraisal Practice course from a nationally  
387   recognized or state-recognized appraisal organization, career  
388   center, accredited community college, college, or university,  
389   state or federal agency or commission, or proprietary real  
390   estate school that holds a permit pursuant to s. 475.451. ~~The~~  
391   ~~board may increase the required number of hours to not more than~~  
392   ~~225 hours.~~ A classroom hour is defined as 50 minutes out of each  
393   60-minute segment. Past courses may be approved by the board and  
394   substituted on an hour-for-hour basis.

395       ~~(4)-(5)~~ Each applicant must furnish, under oath, a detailed  
396   statement of the experience for each year of experience she or  
397   he claims. Upon request, the applicant shall furnish to the  
398   board, for its examination, copies of appraisal reports or file  
399   memoranda to support the claim for experience. Any appraisal  
400   report or file memoranda used to support a claim for experience  
401   must be maintained by the applicant for no less than 5 years  
402   after the date of certification.

403       (5) The board may implement the provisions of this section  
404   by rule.

405       Section 6. Section 475.6171, Florida Statutes, is created  
406   to read:

407       475.6171 Issuance of registration or certification.--The  
408   registration or certification of an applicant may be issued upon  
409   receipt by the board of the following:

410       (1) A complete application indicating compliance with  
411   qualifications as specified in s. 475.615.



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412        (2) Proof of successful course completion as specified in  
413        s. 475.617.

414        (3) Proof of experience for certification as specified in  
415        s. 475.617.

416        (4) If required, proof of passing a written examination as  
417        specified in s. 475.616. No certification shall be issued based  
418        upon any examination results obtained more than 24 months after  
419        the date of examination.

420        (5) The board shall implement this section by rule.

421        Section 7. Subsection (3) is added to section 475.6221,  
422        Florida Statutes, to read:

423        475.6221    Employment of and by registered trainee real  
424        estate appraisers.--

425        (3) A supervisory appraiser may not be employed by a  
426        trainee or by a corporation, partnership, firm, or group in  
427        which the trainee has a controlling interest.

428        Section 8. Section 475.6222, Florida Statutes, is amended  
429        to read:

430        475.6222    Supervision and training of registered trainee  
431        appraisers.--The primary or secondary supervisory appraiser of a  
432        registered trainee appraiser shall provide direct supervision  
433        and training to the registered trainee appraiser. The role and  
434        responsibility of the supervisory appraiser is determined by  
435        rule of the board.

436        Section 9. Section 475.623, Florida Statutes, is amended  
437        to read:

438        475.623    Registration of firm or business name and office  
439        location.--Each appraiser registered, licensed, or certified

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440 | under this part shall furnish in writing to the department each  
441 | firm or business name and address from which she or he operates  
442 | in the performance of appraisal services. Each appraiser must  
443 | notify the department of any change of firm or business name and  
444 | any change of address within 10 days on a form provided by the  
445 | department.

446 |       Section 10. Section 475.624, Florida Statutes, is amended  
447 | to read:

448 |       475.624 Discipline.--The board may deny an application for  
449 | registration, ~~license~~, or certification; may investigate the  
450 | actions of any appraiser registered, licensed, or certified  
451 | under this part; may reprimand or impose an administrative fine  
452 | not to exceed \$5,000 for each count or separate offense against  
453 | any such appraiser; and may revoke or suspend, for a period not  
454 | to exceed 10 years, the registration, license, or certification  
455 | of any such appraiser, or place any such appraiser on probation,  
456 | if it finds that the registered trainee, licensee, or  
457 | certificateholder:

458 |       (1) Has violated any provisions of this part or s.  
459 | 455.227(1); however, certificateholders, registrants, and  
460 | licensees under this part are exempt from the provisions of s.  
461 | 455.227(1)(i).

462 |       (2) Has been guilty of fraud, misrepresentation,  
463 | concealment, false promises, false pretenses, dishonest conduct,  
464 | culpable negligence, or breach of trust in any business  
465 | transaction in this state or any other state, nation, or  
466 | territory; has violated a duty imposed upon her or him by law or  
467 | by the terms of a contract, whether written, oral, express, or

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468 implied, in an appraisal assignment; has aided, assisted, or  
469 conspired with any other person engaged in any such misconduct  
470 and in furtherance thereof; or has formed an intent, design, or  
471 scheme to engage in such misconduct and committed an overt act  
472 in furtherance of such intent, design, or scheme. It is  
473 immaterial to the guilt of the registered trainee, licensee, or  
474 certificateholder that the victim or intended victim of the  
475 misconduct has sustained no damage or loss; that the damage or  
476 loss has been settled and paid after discovery of the  
477 misconduct; or that such victim or intended victim was a  
478 customer or a person in confidential relation with the  
479 registered trainee, licensee, or certificateholder, or was an  
480 identified member of the general public.

481 (3) Has advertised services in a manner which is  
482 fraudulent, false, deceptive, or misleading in form or content.

483 (4) Has violated any of the provisions of this part  
484 ~~section~~ or any lawful order or rule issued under the provisions  
485 of this part ~~section~~ or chapter 455.

486 (5) Has been convicted or found guilty of, or entered a  
487 plea of nolo contendere to, regardless of adjudication, a crime  
488 in any jurisdiction which directly relates to the activities of  
489 a registered trainee appraiser or licensed or certified  
490 appraiser, or which involves moral turpitude or fraudulent or  
491 dishonest conduct. The record of a conviction certified or  
492 authenticated in such form as admissible in evidence under the  
493 laws of the state shall be admissible as prima facie evidence of  
494 such guilt.

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(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against, or has been disbarred, or has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.

(8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice which shows that she

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or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(11) Has made or filed a report or record, either written or oral, which the registered trainee, licensee, or certificateholder knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those which are signed or presented in the capacity of a registered trainee appraiser or licensed or certified appraiser.

(12) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(13) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(14) Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

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(16) Has failed to communicate an appraisal without good cause.

(17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she or he operates as a registered trainee real estate appraiser or licensed or certified real estate appraiser.

Section 11. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 217 CS                      Sinkhole Insurance  
**SPONSOR(S):** Legg and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 1 N, w/CS	Tinney	Cooper
2) State Administration Appropriations Committee		Rayman <i>SR</i>	Belcher <i>mpb</i>
3) Commerce Council			
4) _____			
5) _____			

### SUMMARY ANALYSIS

In the United States, damage to the ground under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance. Since 1981, in Florida, insurers offering property coverage have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures and for stabilizing the ground beneath covered structures. Florida has more sinkholes than any other state in the nation.

Sinkholes are a naturally occurring phenomenon as rain and groundwater flow through the top layer of soil into the limestone and dolomite layers that underlay most of Florida. Florida's aquifers, the primary source for fresh water in the state, are located beneath the layer of limestone, i.e., the karst.

While sinkholes occur naturally, meaning some likely would occur in the state even if Florida were uninhabited, sinkholes occur more frequently due to human interaction with the state's natural environment. The counties in the west central portion of the state, i.e., the Tampa Bay area, are particularly prone to sinkhole formation and collapse because the limestone in that area is closer to the surface, thus making the rock layer beneath the surface there more vulnerable to erosion.

During the 2005 Legislative session, several laws passed governing property insurance in Florida in an attempt to stabilize the market for residential and commercial property. Many of the changes may be found in chapter 2005-111, Laws of Florida, including changes to the laws governing coverage for sinkholes in homeowners' policies.

The bill amends the laws governing property insurance claims relating to sinkhole damage. The bill establishes a two-step process, called Phase I and Phase II testing, for verifying the presence of a sinkhole. Both phases of testing require either a professional engineer or professional geologist to supervise the testing. A written report of findings and recommendations for repair and stabilization of the affected property, including specific requirements for the type of information to be included in the report, are required by the bill.

The bill establishes an alternative process for resolving sinkhole disputes between a policyholder and his or her insurer. The dispute resolution process established by the bill is called a "neutral evaluation." The Department of Financial Services (DFS) is directed to adopt rules to implement the neutral evaluation process. Information introduced during the course of the neutral evaluation is not admissible in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees. The bill directs the neutral evaluator to issue a non-binding report at the conclusion of the hearing. The report will indicate whether a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information regarding appropriate methods for stabilizing the land and affected structures, including the associated costs. A policyholder may seek further redress for the disputed claim in court, however, an insurer may not be liable for the policyholder's attorney fees under the bill.

DFS anticipates costs to implement the neutral evaluation process funding requirements in Fiscal Year 2006-07 of \$125,808 for two positions and printing costs for consumer pamphlets from the Insurance Regulatory Trust Fund.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0217b.STA.doc  
**DATE:** 2/13/2006



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government:** The bill grants rulemaking authority to the Department of Financial Services (DFS) relating to the neutral evaluation process established by the bill as an alternative to a court hearing, (lines 337 and 338). Additional rulemaking authority is granted to DFS for the creation and maintenance of a list of professional geologists and professional engineers with experience in determining whether structural damage is due to the presence of a sinkhole or other natural occurrence, (lines 145 and 146).

**Promote Personal Responsibility:** The bill eliminates the statutory ability of a policyholder to recoup attorney fees and extra contractual damages relating to a sinkhole claim if the policyholder refuses to participate in the neutral evaluation process or if the policyholder declines to resolve his or her sinkhole claim as recommended by the neutral evaluator.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

A sinkhole is defined in Florida law as a landform created by soil, sediment, and rock subsiding or sinking as underlying layers are dissolved or weakened by groundwater.<sup>1</sup> A sinkhole may form either by the ground collapsing on itself to form a hole or by the ground settling to form a crater or indentation in the soil.

In the U.S., damage to the land under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance, although coverage for damage from movement of the earth may be purchased as a separate endorsement (or rider) or through a public insurer such as the California Earthquake Authority.<sup>2</sup> Since 1981, in Florida, insurers offering property coverage to homeowners have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures **and** for stabilizing the ground beneath covered structures.<sup>3</sup>

##### Karst: A Unique Feature of Florida's Geology

Most of Florida is underlain by porous limestone; this underlying layer of limestone, along with the other materials, has resulted in a "karstic" topography. "Karst" is a word used to describe the landforms, or physical features, of the limestone underlying the state and the natural systems draining through the limestone into subsurface aquifers. Familiar forms of drainage systems include streams, rivers, and lakes which cross the land and eventually drain into an ocean, although these are not the most common natural drainage systems in Florida.<sup>4</sup>

Rather than lakes, rivers, and streams, karst terrains such as that present in Florida, are more typified by underground drainage systems consisting primarily of sinkholes, swallets, springs, caves, disappearing streams and underground drainage channels.<sup>5</sup> These underground drainage channels,

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<sup>1</sup> Section 627.706, F.S., 2005.

<sup>2</sup> Insurance Information Institute; "Earthquakes: Risk and Insurance Issues," available at <http://www.iii.org/media/hottopics/insurance/earthquake/?printerfriendly=yes>, viewed January 18, 2006.

<sup>3</sup> Section 2, chapter 81-280, Laws of Florida (LOF).

<sup>4</sup> Florida Geological Survey, Department of Environmental Protection, *Karst in Florida*, Publication 29, by Ed Lane, available at [<sup>5</sup> \*Id.\*](http://fulltext.fcla.edu/cgi/t/text/text-idx?c=feol;cc=feol;sid=4eb76fb3d085a4a762e338980b51007f;rgn=main;view=text;idno=UF00000145;node=UF00000145%3A1;a=41; p. 2, viewed January 21, 2006.</a></p></div><div data-bbox=)

along with the limestone and sand filters above them, all carry water into the Floridan aquifer and other aquifers. Florida's natural aquifer system supplies 95 percent of the drinking water in the state.<sup>6</sup> Generally, the karst system under the Florida peninsula is several hundred feet thick in the northern part of the state and more than 3,000 feet thick under southern parts of the state.<sup>7</sup>

A karstic topography is a specific landform that develops on rock types, such as limestone and, to a lesser extent, dolomite, that are readily dissolved by water.<sup>8</sup> In addition to Florida and many other parts of the United States, part of Ireland also exists primarily on a karst under layer, as do the caves at the Mammoth Cave National Park near Bowling Green, KY, and the Greek Islands, along with many other parts of the world.<sup>9</sup>

### Sinkhole Formation

Karst is a generic term which refers to the characteristic terrain produced by erosion associated with the mechanical and chemical weathering and dissolution of limestone or dolostone, the two most common carbonate rocks in Florida. Florida has more sinkholes than any other state in the nation.<sup>10</sup>

Erosion begins when the limestone is exposed to acidic water. Most rainwater is slightly acidic and usually becomes more acidic as it moves through decaying plant debris.<sup>11</sup> As acidic water passes through the subsurface rock layers, it wears away or erodes the limestone, thus gradually thinning and weakening the competent rock layers. This desolution, drainage and filtering of groundwater through the rock is a naturally-occurring process, even if humans do not intervene.<sup>12</sup>

The water level of the aquifers rise and fall naturally in response to groundwater levels reflecting seasonal rainfall fluctuations. The groundwater pressure provides hydrostatic support to near-surface rock layers, including sinkhole plugs and subsurface caves filled with water. This changing support typically may result in rock and sediment movement responding to the groundwater pressure head changes. When the water table is lower than average, the limestone layer generally receives less support, thus increasing the opportunity for the ground layer to sink to form either a hole or an indentation in the top layer of ground, i.e., a sinkhole.<sup>13</sup>

Changes to the surface of the land in the state, such as through urbanization and development, also can affect the likelihood of a sinkhole forming. As more land is developed for homes and other buildings and structures, land is cleared and natural drainage systems for rain and other groundwater are altered.<sup>14</sup>

Areas that have been cleared and developed generally reduce the topsoil and overburden, i.e., surface sediments, on top of the subsurface rock aquifer layers. This means there is less ground to filter water before it reaches the limestone, thus potentially increasing the acidity of the water as it reaches the limestone under layer. Acidity in the water helps dissolve limestone more quickly than water that reaches the subsurface through a thicker layer of topsoil and overburden.<sup>15</sup>

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<sup>6</sup> University of Florida; Institute of Food and Agricultural Sciences (IFAS); *Plant Management in Florida's Waters: Sinkholes*; available at <http://aquat1.ifas.ufl.edu/guide/sinkholes.html>, viewed January 22, 2006.

<sup>7</sup> University of South Florida; Karst Research Group; *Florida Karst I: Hydrogeologic Framework of the Floridan Aquifer*, available at <http://uweb.cas.usf.edu/~vacher/FloridaKarst/FloridaKarstI.htm>, viewed January 22, 2006.

<sup>8</sup> Definition found on the website of the Geological Survey of Ireland, available at <http://www.gsi.ie/workgsi/groundwater/karstbook/01-what-is.htm>, viewed January 20, 2006.

<sup>9</sup> *Id.*

<sup>10</sup> *See supra*, note 6.

<sup>11</sup> Florida Geological Survey, Department of Environmental Protection, available at <http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm>, viewed January 21, 2006.

<sup>12</sup> *Id.*

<sup>13</sup> *See supra*, note 6

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

This impact to natural drainage systems is further exacerbated by the increased demand for water for human use and changes in the local watershed run-off characteristics. Further, as water is withdrawn from the aquifer, the stone layer resting on the aquifer loses groundwater hydrostatic support from the bottom at the same time topsoil and overburden is disturbed on top of the land. Thus, sinkhole formation is increased in Florida due to growing population, associated infrastructure and buildings, and the impacts these factors have on the natural aquifer units.<sup>16</sup>

On the surface, sinkholes may develop progressively as subtle, bowl-shaped depressions, or they may collapse suddenly into steeply sided craters, some of which may fill with water. The shape of the sinkhole, and the speed with which it forms, depend on how the sinkhole formed, the size of the underground cavity, and the thickness and material of the overburden (rock, sediments and soils resting on or within the limestone bedrock).<sup>17</sup>

### **Increase in Sinkhole Appearance in Florida**

Sinkhole formation is aggravated and accelerated by urbanization. Development increases water usage, alters drainage pathways, adds weight to the ground surface, and redistributes soil. According to the Federal Emergency Management Agency (FEMA), the number of human-induced sinkholes has doubled since 1930. Similarly, insurance claims from Florida homeowners for damages resulting from sinkholes have increased dramatically both in number and costs over the past 20 years.<sup>18</sup>

Although a sinkhole can form without warning, specific signs can signal potential development. Some potential indications of the presence of a sinkhole include:

- Slumping or falling fence posts, trees, or foundations;
- Sudden formation of small ponds or loss of water from same;
- Sudden appearance of a crater or hole;
- Wilting vegetation;
- Discolored well water;
- Structural cracks in ceiling, walls, and floors.<sup>19</sup>

### **Sinkholes in Tampa Bay**

The seven counties comprising the Tampa Bay area of the state include Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. The major cities in the seven-county area include the communities of Tampa, St. Petersburg, Clearwater; Lakeland; and Sarasota-Bradenton.<sup>20</sup>

The karstic layer in west-central Florida, i.e., the Tampa Bay area, has unique features when compared to the karst in other parts of the state. Part of the soil that overlays the karst in the Tampa Bay area is more resistant to water filtering through it because the ground in that part of the state has a larger percentage of clay and other less permeable materials. As a result, the karst in west-central Florida has a mottled or mantled appearance.<sup>21</sup> The mottling occurs as water filtering through the karst seeks the easiest path for passing through to the underlying aquifer.

One result of the mantled karst of the Tampa Bay area is the designation of several areas as "lake districts." Many of the lakes in the region were created when the surface of the ground collapsed into

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<sup>16</sup> *Id.*

<sup>17</sup> *Sinkholes, West-Central Florida: A Link Between Surface Water and Ground Water*; excerpt from USGS Circular 1182. USGS Circular 1182 is entitled *Land Subsidence in the United States* by Galloway, Jones, and Ingebritsen, 1999.

<sup>18</sup> *See supra*, note 6.

<sup>19</sup> *Id.*

<sup>20</sup> Tampa Bay Partnership, homepage, available at <http://www.tampabay.org/>, viewed January 18, 2006.

<sup>21</sup> *See supra*, note 17, at 124.

the buried karst. These collapses, or indentions later filled with water, thus forming the lakes in the west-central portion of the state.<sup>22</sup>

### **The Florida Geological Survey and the Florida Sinkhole Database**

The Florida Geological Survey (the Survey) within the Department of Environmental Protection is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.<sup>23</sup>

The Survey investigates calls from the state's Emergency Operations Center, a part of the Department of Community Affairs. The Emergency Operations Center serves a clearinghouse for emergency situations of all types, including sinkhole activity, throughout the state. In addition, staff of the Survey responds to requests for information and assistance from the public, state and federal agencies, and consultants regarding sinkhole development or potential for development.

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. The database is available through the website of the Department of Environmental Protection, along with a form to be used to report suspected new sinkholes. The Survey reports that it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.<sup>24</sup>

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, numerous sinkholes also occur in more remote and less populated areas, many of which go unseen and unreported. As a result, sinkholes that formed earlier than the 1950s may still be unrecorded in the database.<sup>25</sup>

### **2005 Joint Select Committee on Hurricane Insurance**

On January 5, 2005, Senate President Tom Lee and House Speaker Allan Bense appointed the Joint Select Committee on Hurricane Insurance. The Joint Select Committee was directed to study all aspects of the property insurance market that promote the availability and affordability of coverage and to make recommendations to stabilize the insurance market in Florida for commercial and residential property.

As part of its investigation and information gathering, members of the Joint Select Committee heard both from insurers and representatives of Citizens Property Insurance Corporation (Citizens) regarding the problem of sinkholes. Testimony to the Joint Select Committee revealed that in the Tampa Bay area, private insurers are non-renewing policies and declining to write new policies due to the exposure to sinkhole claims. As a result, many homeowners in this area have been forced to obtain coverage from Citizens.

Citizens reported to the Joint Select Committee that since 2001, the number of homeowner policies in the Tampa Bay area has dramatically increased when compared to policies in force for the Tampa Bay area at the end of 2004. Citizens acknowledged that it has seen large increases in homeowner policies in Dade, Broward, and Palm Beach counties during the same period, but the increases in the Tampa Bay area are larger than the increases in south Florida or any other region of the state.

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<sup>22</sup> *Id.*

<sup>23</sup> Section 377.075, F.S.

<sup>24</sup> Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at <http://www.dep.state.fl.us/geology/feedback/faq.htm#9>, viewed January 22, 2006.

<sup>25</sup> *Id.*

Among the issues highlighted for the Joint Select Committee were the cost to insure against sinkhole-related losses and the increasing costs to remedy damage caused to insured property by sinkholes. Both Citizens and private insurers testified to the Joint Select Committee that the costs associated with sinkholes and property insurance adversely impact both the availability and affordability of homeowner insurance.

Insurers testifying before the Joint Select Committee also indicated a concern about the best method for remediation of sinkhole damage; how to prove property damage results from a sinkhole rather than from ground settling, soil type, or other geological occurrence; and the responsibility to pay the costs for sinkhole testing and remediation, among other related considerations.

### **Identifying Sinkholes and Repairing Sinkhole Damage**

Several geology and engineering firms in the state routinely survey properties reported to insurers for sinkhole claims. The firms perform several types of tests, including sampling soils, photographing damage and features of interest, boring into affected soil and house foundations, among several other tests.

There are also engineering firms who repair foundations and other structures damaged by sinkholes. Methods of repair vary from the simple injection of grout into the hole to more advanced systems of engineered reinforced plugs, pins, and porous concrete. In general, if a repair has been certified by a licensed engineer, and completed to the satisfaction of the homeowner's insurance company, it likely will be safe for the near term. However, as a sinkhole is a natural geological phenomenon, there is no guarantee that a repaired sinkhole will not recur or cause future problems.<sup>26</sup>

### **2005 Legislative Changes to Laws Governing Sinkhole Insurance**

Last year, the Legislature enacted several changes to laws governing property insurance in Florida in an attempt to stabilize the market for residential and commercial property. Many of the changes enacted in 2005 may be found in chapter 2005-111, Laws of Florida, including changes to the laws governing coverage for sinkholes in homeowners' policies.

The major changes enacted in 2005 regarding sinkhole coverage in property insurance policies include:

- Changed definitions for terms used in sinkhole claims;<sup>27</sup>
- Created an inspection, investigation, and testing process for evaluation of sinkhole claims by insurers;<sup>28</sup>
- Required sinkhole claims to be recorded with the property appraiser and disclosed to subsequent purchasers of property affected by sinkholes;<sup>29</sup> and
- Created law recognizing the sinkhole database of the Florida Geological Survey and designated it as the official statewide database of sinkholes, including the expansion and maintenance of the database.<sup>30</sup>

### **Current Law and Changes Proposed by the Bill**

Several sections of current law govern the requirements for property insurance policies regarding coverage for sinkholes.<sup>31</sup> Definitions relating to sinkhole coverage include such terms as "sinkhole," "sinkhole loss," "sinkhole activity," "engineer," and "professional geologist".<sup>32</sup> None of the definitions is

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<sup>26</sup> Florida Geological Survey, Department of Environmental Protection, available at <http://www.dep.state.fl.us/geology/feedback/faq.htm>, viewed January 21, 2006.

<sup>27</sup> Section 17, chapter 2005-111, L.O.F.

<sup>28</sup> Sections 19, 20, and 21, chapter 2005-111, L.O.F.

<sup>29</sup> Section 21, chapter 2005-111, L.O.F.

<sup>30</sup> Section 18, chapter 2005-111, L.O.F.

<sup>31</sup> See sections 627.706, 627.7061, 627.7065, 627.707, 627.7072, 627.7073, and 627.7077, F.S., 2005.

<sup>32</sup> Section 627.706, F.S., 2005.

changed or amended by the bill, although references to engineers throughout the laws governing sinkhole claims are changed to refer to a "professional engineer." The bill does not amend law governing the requirement for homeowners' policies to provide sinkhole coverage or the law governing the database of sinkhole information.

Under current law, every insurer authorized to offer residential or commercial property insurance must make sinkhole coverage available to policyholders.<sup>33</sup> Current law requires insurers to make an initial inspection of the sinkhole claim once the claim is filed with the insurer.<sup>34</sup> If structural damage is discovered in the initial inspection, then the insurer must obtain a written report from an engineer or professional geologist that the cause of the damage is not sinkhole activity in order to deny the claim.<sup>35</sup>

Insurers are not allowed to nonrenew property insurance policies on the basis that a sinkhole claim was filed by the policyholder as long as the claim payment is less than policy limits and the policyholder have repaired the structure.<sup>36</sup> The bill does not change current law regarding coverage for sinkhole claims or nonrenewal of property insurance policies as a result of a sinkhole claim.

Under current law, sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation, as well as repairs to the structure, up to the limits of the policy.<sup>37</sup> It allows an insurer to deny a sinkhole claim if the insurer or its adjuster determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.<sup>38</sup> If an insurer cannot determine the cause of the loss or if the policyholder demands testing, the insurer must engage an engineer and a geologist to conduct testing.<sup>39</sup>

The bill amends s. 627.707, F.S., relating to the standards for investigation of sinkhole claims by insurers. Under the bill, an insurer may pay a contractor or other person designated by the policyholder to perform the land, building, and foundation repairs directly for such repairs within specified time periods. The bill also states that an insurer is not liable for sinkhole stabilization and repairs unless the insurer acknowledges its liability in writing. The bill limits an insurer's risk relating to sinkholes specifically to policy limits, under most circumstances, if the sinkhole repair is made to a structure covered by a personal lines policy.

Section 627.707(7), F.S., currently authorizes an insurer to recoup the costs associated with testing for a sinkhole, up to \$2,500, from the policyholder under specified circumstances. For example, an insurer may charge its policyholder if the insurer has undertaken initial testing and determined a sinkhole is not the likely cause of the damage. Under those circumstances, a policyholder may ask for additional, more extensive and costly testing. If such additional testing is requested by the policyholder and the insurer believes the policyholder is not acting in good faith, the insurer is authorized by law to charge the policyholder for the additional testing, up to a maximum of \$2,500.

Under the bill, the law authorizing an insurer to recoup part of its costs associated with testing for a sinkhole is amended. An insurer shall recoup up to \$1,000 (rather than \$2,500 under current law) from the policyholder, for the second testing series, after initial indications are that a sinkhole likely is not the cause of the property damage. There will no longer be a requirement for the policyholder to have acted in bad faith in order for the insurer to receive reimbursement for up to \$1,000.

Currently, s. 627.7072, F.S., requires sinkhole testing to be conducted in compliance with the standards of the Florida Geological Survey. The law presently requires a geologist or engineer who conducts a sinkhole study to issue a report and certification as to the cause of the loss. If a sinkhole loss is verified,

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<sup>33</sup> Section 627.706(1), F.S., 2005.

<sup>34</sup> Section 627.707, F.S., 2005.

<sup>35</sup> *Id.*

<sup>36</sup> Section 627.707(8), F.S., 2005.

<sup>37</sup> Section 627.707(4) and (5), F.S., 2005.

<sup>38</sup> Section 627.707(3), F.S., 2005.

<sup>39</sup> Section 627.707(3), (4), (5), (6), and (7), F.S., 2005.

the report on the sinkhole is required to include recommendations for stabilizing the land and building and for repairing the foundation.

The bill creates law to outline the process an insurer must follow in investigating a sinkhole claim. Under the bill, an insurer must first inspect damages; if the insurer cannot determine the cause of the damage, or if the damage appears to be the result of a sinkhole, the insurer must conduct testing to determine the cause and extent of the damage.

The bill establishes a two-step process, called Phase I and Phase II testing, for verifying the presence of a sinkhole. Both phases of testing require either a professional engineer or professional geologist to supervise the testing. By law, a professional engineer is one who is licensed by the state to engage in the practice of engineering.<sup>40</sup> Similarly, the definition for "professional geologist" specifies the term means a geologist licensed by the state.<sup>41</sup>

The bill directs DFS to maintain a list of qualified professional geologists and professional engineers who are qualified to test for the presence of sinkholes. Insurers are required by the bill to select a professional geologist or professional engineer for sinkhole testing from the DFS list. Under the bill, Phase I testing includes:

- identification and location of observable damage to the insured property and structures;
- a geophysical survey of the affected property, including the use of specified testing techniques and methods;
- boring into the affected property in two or more sites around the foundation to determine the composition and relative strength of surface soils, including specific measurements and tools;
- excavation of one or two test pits to determine specific information about the foundation of the affected structure;
- preparation of a map of the affected site, including photographs and a written description of findings;
- preparation of a floor slab elevation map; and
- other appropriate tests at the discretion of the engineer or geologist.

If testing conducted under Phase I is inconclusive in determining the presence of a sinkhole or if the initial testing reveals damage other than the type generally associated with a sinkhole, the bill specifies additional testing to be conducted as Phase II of the investigation. A policyholder also has the option under the bill of providing a written request to his or her insurer for Phase II testing. The bill requires Phase II testing also to be conducted under the supervision of a professional engineer or professional geologist. Under the bill, Phase II testing includes:

- a floor elevation survey to measure variances in the floor elevation;
- at least two invasive penetration borings to determine the composition of the ground beneath the affected structure;
- laboratory analyses of samples found in the upper 20 feet of the ground to determine whether the soil composition may have contributed to the damaged structure; and
- other tests deemed appropriate either by the engineer or geologist.

After completion of the tests specified for Phase I and Phase II of the investigation, the bill requires the engineer or geologist to submit a written report of his or her findings to the insurer. The report is required by the bill to include relative test data and logs, error reports and similar information, as well as other information specified by current law.

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<sup>40</sup> See s. 471.005, F.S., 2005, for the definition of "engineer" which includes the term "professional engineer". Engineers are licensed by the Department of Business and Professional Regulation.

<sup>41</sup> See s. 492.102, F.S., 2005, for the definition of "professional geologist". Geologists are licensed by the Department of Business and Professional Regulation.

Under current law in s. 627.7073, F.S., after completion of the tests to determine the presence of a sinkhole, the engineer or geologist is required to submit a written report of his or her findings to the insurer. Current law specifies the content of the report, regardless of whether the geologist or engineer determines the damage to the structure is due to a sinkhole or other phenomenon.

The bill amends the current law specifying the information to be submitted to the insurer following testing to determine whether a sinkhole exists under the damaged structure. Under the bill, the final report from the professional geologist or professional engineer, including findings, opinions, and recommendations, is considered conclusive unless contrary findings and recommendations are proven by clear and convincing evidence. Under the bill, the final report will be required to identify the "cause of distress" to the affected property, rather than to verify or eliminate a sinkhole as the cause of the damage.

The bill creates an alternative process for resolving disputes between a policyholder and his or her insurer relating to sinkhole claims. The dispute resolution process established by the bill is called a "neutral evaluation". DFS is directed by the bill to adopt rules to implement the neutral evaluation process. The neutral evaluation process created by the bill supersedes the alternative dispute process established by s. 627.7015, F.S. The bill also directs DFS to certify and maintain a list of neutral evaluators to moderate the dispute process.

The bill requires insurers to notify a policyholder of his or her right to a hearing under the neutral evaluation process. DFS is directed by the bill to prepare a consumer pamphlet describing the neutral evaluation process. The pamphlet, along with directions and applications, will be distributed to affected policyholders by their respective insurers. The bill specifies that the hearing process should be informal and that formal rules of evidence need not apply. Neither party is required to attend the hearing if a representative is designated to attend in place of either party.

The bill specifies that a professional engineer or professional geologist may act as a neutral evaluator. However, the bill requires such persons to complete a course in alternative dispute resolution that DFS has approved before serving as a neutral evaluator.

Under the bill, neutral evaluation is optional and nonbinding; either the policyholder or the insurer may refuse to participate. Participation in neutral evaluation will toll the time period for filing suit related to the sinkhole claim for 60 days following the conclusion of the neutral evaluation. Similarly, participation in a neutral evaluation will stay any active legal actions relating to the sinkhole claim. Insurers are required by the bill to pay the costs associated with a neutral evaluation.

The bill requires a neutral evaluation to be held within 45 days after DFS receives the request for a hearing. Neutral evaluation hearings may be conducted by telephone, if possible and convenient. The bill authorizes appropriate staff of DFS to assist policyholders who participate in the hearing without representation by an attorney. Information introduced during the course of the neutral evaluation is not admissible under the bill in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees.

The bill directs the neutral evaluator to issue a report at the conclusion of the neutral evaluation hearing. The report will indicate whether the evaluator believes a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information relating to the appropriate methods for stabilizing the land and affected structures, including the estimated costs associated with sinkhole remediation. The bill requires the neutral evaluator to send a copy of the final report to DFS and to all parties participating in the neutral evaluation.

The bill states that the report and recommendations of the neutral evaluator are not binding on the participants in the hearing. This means either the insurer or the policyholder may seek further redress for the disputed claim in court. However, if the policyholder either refuses to participate in neutral evaluation or to resolve the claim as recommended by the neutral evaluator, the insurer will not be liable for the policyholder's attorneys' fees in subsequent legal actions relating to the sinkhole claim.



The bill authorizes a party to neutral evaluation to seek judicial review of the recommendations resulting from the neutral evaluation to determine whether the recommendations are reasonable. The bill specifies that a court must find the recommendations to be reasonable unless they were procured by fraud, corruption, or other undue means. Similarly, if the court determines the neutral evaluator was clearly partial to one or the other party, or if misconduct occurred during the neutral evaluation hearing, then the court is authorized by the bill to vacate the recommendations of the neutral evaluator.

**C. SECTION DIRECTORY:**

**Section 1.** Names the act the "Sinkhole Insurance Relief Act".

**Section 2.** Amends s. 627.707, F.S., relating to the standards for investigating sinkhole claims by insurers.

**Section 3.** Creates s. 627.7071, F.S., to outline the process insurers should use in investigating sinkhole claims.

**Section 4.** Amends s. 627.7072, F.S., relating to the tests to determine whether a sinkhole exists.

**Section 5.** Amends s. 627.7073, F.S., which specifies the information to be included in a sinkhole report.

**Section 6.** Creates s. 627.7074, F.S., to establish an alternative hearing process, a "neutral evaluation" process, to resolve disputed sinkhole insurance claims.

**Section 7.** Provides an effective date of July 1, 2006, for the bill.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

	<u>FY 2006-07</u>	<u>FY 2007-08</u>
1. Revenues:		
None.		
2. Expenditures:		
Recurring		
Salaries and Benefits (2 FTE)	\$ 93,044	\$ 93,044
(Salary rate 59,435)		
Expenses	21,492	21,492
Human Resources Services	786	786
Total – recurring	\$ 115,322	\$ 115,322
Non-Recurring		
Expenses	\$ 6,686	
Operating Capital Outlay	3,800	
Total – non-recurring	\$ 10,486	
Total Expenditures:		
Insurance Regulatory Trust Fund	\$ 125,808	\$ 115,322

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The House Insurance Committee requested information from three private insurers, State Farm, Allstate, and First Floridian (Travelers) for historical data relating to sinkhole claims as part of the bill analysis. First Floridian did not provide the requested information. State Farm and Allstate indicated their respective experience in Florida with sinkhole claims is comparable to the information provided by Citizens (see Fiscal Comments section of analysis).

Under the bill, a policyholder shall be charged up to \$1,000 by his or her insurer related to a sinkhole claim. The changes proposed by the bill (line 129) may result in insurers deciding through their respective homeowners' policies, i.e., the insurance contract, when to charge a policyholder up to \$1,000 for costs associated with investigating a sinkhole claim.

Under the bill, insurers are required to pay the costs associated with a neutral evaluation hearing. The associated costs likely will include expenses for the neutral evaluator, costs for teleconference facilities, room rental if a hearing is not held in Tallahassee, and other similar expenses. The costs for such hearings are not quantifiable, however, as the number of evaluators and hearings are not known. Under the bill, the department shall adopt rules of procedure for the neutral evaluation process.

D. FISCAL COMMENTS:

The Department of Financial Services (DFS) is directed by the bill to administer the neutral evaluation process established by the bill. This will include:

- proposing and adopting rules to implement the alternative method for settling sinkhole disputes between insurers and policyholders;
- selecting a pool of professional geologists and professional engineers to serve as neutral evaluators;
- preparing a consumer pamphlet explaining the neutral evaluation program, including applications and other forms; and
- providing staff assistance to consumers who participate in a neutral evaluation without the benefit of legal representation.

DFS estimates a total first-year cost of \$125,808 for the 2 FTE employees and the printing costs for consumer information pamphlets. A Management Analyst I would implement and manage the neutral evaluation process, including selecting mediators and scheduling hearings. The costs associated with this position include rate for 27,379, salary and benefits of \$42,861; expenses of \$9,746; human resources services of \$393; and non-recurring start-up costs of \$5,243. The total cost for the Management Analyst I is \$58,243. DFS also recommends a Consumer Affairs Specialist serve as liaison for consumers who participate in neutral evaluation without the benefit of an attorney. The costs associated with the position include rate for 32,056, salary and benefits of \$50,183; expenses of \$9,746; human resources services of \$393; and non-recurring start-up costs of \$5,243. The total cost for the Consumer Affairs Specialist is \$65,565.<sup>42</sup>

DFS is required to prepare a consumer information pamphlet for consumers regarding neutral evaluation and alternative dispute resolution for sinkholes. The cost to the Division of Consumer

<sup>42</sup> Legislative Bill Analysis from DFS dated January 23, 2006 (amended).

Services will be approximately \$2,000 for a tri-fold brochure. This amount will obtain 4,000 in English, 1,000 in Spanish, and 250 in Creole. This would be a recurring expenditure.<sup>43</sup>

At the end of 2005, Citizens Property Insurance Corporation, the state's insurer-of-last-resort for residential and commercial property, had 149,087 homeowner/personal lines policies in place for the Tampa Bay area. For Citizens, the Tampa Bay area includes five counties: Citrus, Hernando, Hillsborough, Pasco, and Pinellas. The chart which follows shows the increase in policies for this area for the past 4 years.<sup>44</sup>

Personal Lines Account - Policies in Force

Calendar Year	2002	2003	2004	2005
<b>CITRUS</b>	98	1,052	2,228	3,187
<b>HERNANDO</b>	983	7,378	11,367	13,536
<b>HILLSBOROUGH</b>	2,049	20,959	32,328	26,303
<b>PASCO</b>	4,237	25,034	37,772	40,580
<b>PINELLAS</b>	11,283	41,686	58,719	65,481
<b>Total - Five Counties</b>	18,650	96,109	142,414	149,087

Citizens attributes much of the growth in homeowner/personal lines policies for the Tampa Bay area to the growth in the number of sinkhole claims annually in that part of the state, along with the increasing cost to adjust, investigate, and settle those claims. The number of policies is growing in Tampa Bay because private insurers are more reluctant to underwrite sinkhole losses in Florida and the Tampa Bay area has experienced a higher number of sinkhole claims than other areas of the state.<sup>45</sup>

The chart which follows shows the total number of sinkhole claims received by Citizens from 2002-05 for its North Gulf Coast region of the state; this region includes Hernando, Hillsborough, Pasco, and Pinellas counties, four of the five counties considered by Citizens to be in the Tampa Bay area.<sup>46</sup>

Region	Calendar Year	Claims Filed	Net Incurred Loss	Net Incurred LAE	Total	Average Cost per Claim
<b>North Gulf Coast (Hernando, Hillsborough, Pasco, Pinellas; does not include Citrus)</b>	<b>2002</b>	9	\$243,050	\$43,449	\$286,499	\$31,833
	<b>2003</b>	277	\$7,270,071	\$1,329,142	8,599,213	31,044
	<b>2004</b>	753	\$32,535,607	\$6,618,285	35,153,892	46,685
	<b>2005</b>	582	\$53,216,349	\$10,211,601	63,427,950	108,983
		<b>1,621</b>	<b>\$93,265,077</b>	<b>\$18,202,478</b>	<b>\$111,465,555</b>	<b>N/A</b>

The *Net Incurred Loss* column in the chart above includes the total costs to Citizens to settle the claims, i.e., payments to policyholders for repairs and stabilization. The *Net Incurred Loss Adjustment Expense (LAE)* column shows the costs associated with adjusting the claims for that region. The LAE, which is not part of the Net Incurred Loss column, includes the cost for investigating a claim; hiring geologists and engineers to determine whether a sinkhole exists; stabilizing a home and foundation after verifying the cause for the damage is a sinkhole; and other incidental and legal expenses. The two columns added together represent the total payment for each claim.<sup>47</sup>

To the degree the bill causes a decrease in sinkhole claims, Citizens and other property insurers in the state may save costs associated with investigating, adjusting, and settling such claims. However, the magnitude and impact of the bill is not quantifiable.

<sup>43</sup> Id.

<sup>44</sup> Information provided by Citizens Property Insurance Corporation, dated 1/23/06, on file with House Insurance Committee.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> See *supra*, note 43.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill grants rulemaking authority to the Department of Financial Services (DFS) in order to implement the neutral evaluation process established by the bill as an alternative to a court hearing (lines 337 and 338). Additional rulemaking authority is granted to DFS for the creation and maintenance of a list of professional geologists and professional engineers with experience in determining whether structural damage is due to the presence of a sinkhole or other natural occurrence, (lines 145 and 146).

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

On line 191, a reference is made to the "Attenberg limits data for clay." The correct name for the test is the "Atterberg" limits data for clay.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

At its January 26, 2006, meeting, the House Insurance Committee adopted a strike-all amendment to HB 217. The major changes to the original bill include the following:

- Directs insurers to select a professional geologist or professional engineer for sinkhole investigations from a list of such professionals maintained by the Department of Financial Services.
- Requires written approval of policyholder before an insurer makes direct payment to the repair person for stabilization and foundation repairs made to an insured structure.
- Clarifies that direct payment by an insurer for stabilization or repair work must be made within 30 days after completion of repairs unless a contract specifies payment to be made within a different time period, but not sooner than 15 days after repairs are completed.
- Decreases, from \$2,500 to \$1,000, the potential cost to a policyholder for requesting Phase II testing related to a sinkhole claim.
- Maintains, rather than amends, current law regarding the standards to be used by an engineer in testing to determine the presence of a sinkhole, i.e., the standards and tests included in Florida Geological Survey Publication #57 (2005).
- Creates law to outline the process and steps an insurer and policyholder should follow for the investigation of sinkhole claims.
- Clarifies that the neutral evaluation process created by the bill for sinkhole disputes supersedes other mediation proceedings available to consumers through DFS.

This staff analysis has been updated to reflect the changes adopted in the strike-all amendment 1/26/06.

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CHAMBER ACTION

The Insurance Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to sinkhole insurance; providing a short title; revising references to certain engineers; amending s. 627.707, F.S.; authorizing insurers to make direct payment for certain repairs; excluding insurers from liability for repairs under certain circumstances; revising the requirements for reimbursement of the insurer with respect to certain claims; reducing the amount a policyholder is required to reimburse an insurer; requiring the Department of Environmental Protection to maintain lists of qualified professionals to conduct certain tests; requiring insurers to obtain such lists and to engage with such professionals for certain tests; authorizing the department to adopt rules; creating s. 627.7071, F.S.; providing legislative intent for the process of filing sinkhole claims; amending s. 627.7072, F.S.; revising testing standards for sinkholes; requiring a report upon conclusion of testing; requiring retention of certain information for a specified period; authorizing

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the department to adopt rules for the implementation of sinkhole testing and reporting; amending s. 627.7073, F.S.; revising a presumption relating to the findings, opinions, and recommendations in sinkhole reports; creating s. 627.7074, F.S.; providing for an alternative procedure for the resolution of disputed sinkhole insurance claims which is optional, nonbinding, and informal; providing definitions; requiring the Department of Financial Services to certify and maintain a list of neutral evaluators, prepare a consumer information pamphlet explaining the alternative procedure, and adopt rules for the implementation of an alternative procedure; providing for payment of costs and attorney's fees; preserving access to courts and authorizing judicial review of neutral evaluation recommendations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Sinkhole Insurance Relief Act."

Section 2. Subsections (2), (3), (5), (6), (7), and (9) of section 627.707, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

627.707 Standards for investigation of sinkhole claims by insurers; nonrenewals.--Upon receipt of a claim for a sinkhole loss, an insurer must meet the following standards in investigating a claim:

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(2) Following the insurer's initial inspection, the insurer shall engage a professional ~~an~~ engineer or a professional geologist, chosen by the department in accordance with subsection (10), to conduct testing as provided in s. 627.7072 to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. 627.7073, if:

(a) The insurer is unable to identify a valid cause of the damage or discovers damage to the structure which is consistent with sinkhole loss; or

(b) The policyholder demands testing in accordance with this section or s. 627.7072.

(3) Following the initial inspection of the insured premises, the insurer shall provide written notice to the policyholder disclosing the following information:

(a) What the insurer has determined to be the cause of damage, if the insurer has made such a determination.

(b) A statement of the circumstances under which the insurer is required to engage a professional ~~an~~ engineer or a professional geologist to verify or eliminate sinkhole loss and to engage a professional ~~an~~ engineer to make recommendations regarding land and building stabilization and foundation repair.

(c) A statement regarding the right of the policyholder to request testing by a professional ~~an~~ engineer or a professional geologist and the circumstances under which the policyholder may demand certain testing.

(5)(a) Subject to paragraph (b), if a sinkhole loss is verified, the insurer shall pay to stabilize the land and

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building and repair the foundation in accordance with the recommendations of the professional engineer as provided under s. 627.7073, and in consultation with the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy.

(b) The insurer may limit its payment to the actual cash value of the sinkhole loss, not including underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs. After the policyholder enters into the contract, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the professional engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred. Upon written approval of the policyholder obtained by the insurer after the completion of the stabilization and foundation repairs, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. If the direct payment is made with the



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written approval of the policyholder obtained after the  
completion of the stabilization and repairs, the insurer has no  
liability for the work performed unless it agrees to such  
liability in writing. The insurer must make direct payment for  
stabilization and repairs, based upon the policyholder's written  
approval, within 30 days after repair completion, unless a  
contract between the policyholder and repair person specifies  
otherwise. However, an insurer may not be required to make such  
direct payment sooner than within 15 days after repair  
completion.

(6) Except as provided in subsection (7), the fees and costs of the professional engineer or the professional geologist shall be paid by the insurer.

(7) If the insurer obtains, pursuant to s. 627.7073, written certification that there is no sinkhole loss or that the cause of the damage was not sinkhole activity, ~~and if the policyholder has submitted the sinkhole claim without good faith grounds for submitting such claim,~~ the policyholder shall reimburse the insurer for 50 percent of the actual costs of the analyses and services provided under ss. 627.7072(4) and 627.7073; however, a policyholder is not required to reimburse an insurer more than \$1,000 ~~\$2,500~~ with respect to any claim. A policyholder is required to pay reimbursement under this subsection only if the insurer, prior to ordering the analysis under s. 627.7072, informs the policyholder in writing of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.

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(9) The insurer may engage a professional structural engineer to make recommendations as to the repair of the structure.

(10) The department shall maintain a list of approved professional engineers and professional geologists who are qualified to conduct testing as provided in s. 627.7072. When an insurer is required to engage a professional engineer or professional geologist under this section, the insurer shall contact the department's Division of Consumer Services to obtain the name of an approved individual or firm that the insurer may engage. The department may adopt rules to implement this subsection.

Section 3. Section 627.7071, Florida Statutes, is created to read:

627.7071 Legislative intent.--It is the intent of the Legislature that the following process be used when a sinkhole claim is filed:

(1) The insurer shall inspect the claim.

(2) If the insurer is unable to determine a valid cause of the damage or discovers damage to the structure consistent with a sinkhole loss or if demanded by the policyholder, the insurer shall engage in phase I testing, as set forth in s. 627.7072(3).

(3) If phase I testing is inconclusive as to the cause of the damage or if demanded by the policyholder, the insurer shall perform phase II testing, as set forth in s. 627.7072(4).

(4) If the policyholder and the insurer are unable to agree on the cause of the damage or other aspects of the

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sinkhole claim, the policyholder and the insurer may take part in neutral evaluation under s. 627.7074.

Section 4. Subsection (1) of section 627.7072, Florida Statutes, is amended, and subsections (3), (4), (5), and (6) are added to that section, to read:

627.7072 Testing standards for sinkholes.--

(1) The professional engineer and professional geologist shall perform such tests as sufficient, in their professional opinion, to determine the presence or absence of sinkhole loss or other cause of damage within reasonable professional probability and for the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.

(3)(a) All of the following may be performed in the initial phase of testing, referred to as phase I testing, by or under the supervision of the professional engineer or professional geologist, as appropriate:

1. Identification and location of all reasonably observable damage.

2. A geophysical survey such as a ground-penetrating radar (GPR) test, an electrical resistivity test, or other appropriate geophysical method.

3. Hand auger boring and push penetrometer testing in two or more locations around the foundation of the structure to determine the composition and relative strength of the nearby surface soils. The hand auger boring must penetrate to 10 feet, and the push penetrometer must penetrate to at least 4 feet. Laboratory tests, including, but not limited to, moisture

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content, organic content for probable organic-rich soils, and  
Attenberg limits data for clays, must be conducted on any  
potentially deleterious soils obtained in the hand auger borings  
to document a proximal cause for damage.

4. The excavation of one or more test pits to determine to  
the extent possible the thickness, bearing depth, and type of  
foundation system used in the construction.

5. Preparation of a site map showing damage locations,  
documentation of representative damage through the use of  
photographs taken at the time of initial and subsequent site  
reconnaissance and field testing under this section, and a  
written description of the nature of each damage feature.

6. A floor slab elevation map.

(b) Phase I testing may include other tests the  
professional engineer and professional geologist deem to be  
practicable and appropriate to identify the cause of distress to  
the property, but may not include the type of tests included  
under phase II.

(4) (a) If testing performed under subsection (3) is  
inconclusive as to the determination of sinkhole loss or reveals  
damage other than that related to a sinkhole, in the opinion of  
either the professional engineer or professional geologist, or  
both, or if additional testing under this section is demanded by  
the policyholder in writing within 60 days after the receipt of  
the phase I testing results, the following additional tests,  
referred to as phase II testing, shall be performed by or under  
the supervision of the professional engineer or professional  
geologist:

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218        1. A floor elevation survey or study to determine any  
219 variances in the floor elevation.

220        2. At least two invasive penetration test borings,  
221 consisting of standard penetration tests, to determine the  
222 composition and properties of the subsurface geologic materials  
223 surrounding the structure. Cone penetrometer tests may be used  
224 to discover the relative consistency of subsurface conditions.

225        3. Laboratory analyses of representative samples of  
226 potentially problematic materials found within the upper 20 feet  
227 of soil to determine if these materials may have contributed to  
228 the damage.

229        (b) Phase II testing may include other tests the  
230 professional engineer and professional geologist deem to be  
231 appropriate.

232        (5) Upon conclusion of testing required by this section,  
233 the person conducting the tests must provide a written report to  
234 the insurer and policyholder. All relative testing data, logs,  
235 error reports, and similar information, regardless of whether  
236 the professional engineer or professional geologist finds the  
237 information to be relevant, shall be retained by the  
238 professional engineer or professional geologist for at least 2  
239 years from the date of the resolution of the claim.

240        (6) The Department of Environmental Protection may adopt  
241 rules to implement this section.

242        Section 5. Subsection (1) of section 627.7073, Florida  
243 Statutes, is amended to read:

244        627.7073 Sinkhole reports.--

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(1) Upon completion of testing as provided in s. 627.7072, the professional engineer and professional geologist shall issue a report and certification to the insurer and the policyholder as provided in this section.

(a) Sinkhole loss is verified if, based upon tests performed in accordance with s. 627.7072, a professional ~~an~~ engineer and a professional geologist issue a written report and certification stating:

1. That the cause of the actual physical and structural damage is sinkhole activity within a reasonable professional probability.

2. That the analyses conducted were of sufficient scope to identify sinkhole activity as the cause of damage within a reasonable professional probability.

3. A description of the tests performed.

4. A recommendation by the professional engineer of methods for stabilizing the land and building and for making repairs to the foundation.

(b) If sinkhole activity is eliminated as the cause of damage to the structure, the professional engineer and professional geologist shall issue a written report and certification to the policyholder and the insurer stating:

1. That the cause of the damage is not sinkhole activity within a reasonable professional probability.

2. That the analyses and tests conducted were of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability.

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3. A statement of the cause of the damage within a reasonable professional probability.

4. A description of the tests performed.

(c) The respective findings, opinions, and recommendations of the professional engineer and professional geologist as to the cause of distress to the property ~~verification or elimination of a sinkhole loss~~ and the findings, opinions, and recommendations of the professional engineer as to land and building stabilization and foundation repair are conclusive, unless contrary findings and conclusions are proven by clear and convincing evidence shall be presumed correct.

Section 6. Section 627.7074, Florida Statutes, is created to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.--

(1) As used in this section:

(a) "Neutral evaluation" means the alternative dispute resolution provided for in this section.

(b) "Neutral evaluator" means an professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, who is determined to be fair and impartial, and who is attempting to resolve the dispute or claim under this section.

(c) "Department" means the Department of Financial Services.

(2) The department shall certify and maintain a list of persons who are neutral evaluators.

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(3) Following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015. The department shall prepare a consumer information pamphlet for distribution by the insurer to policyholders. The pamphlet shall clearly describe the neutral evaluation process and include directions and forms necessary for the policyholder to request a neutral evaluation.

(4) Neutral evaluation is optional and nonbinding. Either the policyholder or the insurer may decline to participate. A request for neutral evaluation shall be filed with the department by the policyholder or the insurer on a form approved by the department. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request. Filing a request for neutral evaluation tolls the applicable time requirements for filing suit for a period of 60 days following the conclusion of the neutral evaluation process or the time prescribed in s. 95.11, whichever is later.

(5) Neutral evaluation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. A party to neutral evaluation is not required to attend neutral evaluation if a representative of the party attends and has the authority to make a binding decision on behalf of the party. All parties shall participate in the evaluation in good faith.



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(6) The insurer shall pay the costs associated with the neutral evaluation.

(7) Upon receipt of a request for neutral evaluation, the department shall refer the request to a neutral evaluator. The neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluation conference shall be held within 45 days after receipt of the request by the department.

(8) The department shall adopt rules of procedure for the neutral evaluation process.

(9) For policyholders not represented by an attorney, a consumer affairs specialist of the department or an employee designated as the primary contact for consumers on issues relating to sinkholes under s. 20.121 shall be available for consultation to the extent that he or she may lawfully do so.

(10) Disclosures and information divulged in the neutral evaluation process are not admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim, except as provided in subsection (13).

(11) Any court proceeding related to the subject matter of the neutral evaluation shall be stayed pending completion of the neutral evaluation.

(12) For matters that are not resolved by the parties at the conclusion of the neutral evaluation, the neutral evaluator shall prepare a report stating that in his or her opinion the sinkhole loss has been verified or eliminated and, if verified, the need for and estimated costs of stabilizing the land and any

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covered structures or buildings and other appropriate remediation or structural repairs. The evaluator's report shall be sent to all parties in attendance at the neutral evaluation and to the department.

(13) The recommendation of the neutral evaluator is not binding on any party and the parties retain access to courts. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim only for purposes of determining the award of attorney's fees.

(14) If the policyholder declines to participate in neutral evaluation requested by the insurer or declines to resolve the matter in accordance with the recommendation of the neutral evaluator pursuant to this section, the insurer shall not be liable for attorney's fees under s. 627.428 or other provisions of the insurance code or for extra contractual damages related to a claim for a sinkhole loss.

(15) A party may seek judicial review of the recommendation of the neutral evaluator to determine whether the recommendation is reasonable. A recommendation is reasonable unless it was procured by corruption, fraud, or other undue means; there was evident partiality by the neutral evaluator or misconduct prejudicing the rights of any party; or the neutral evaluator exceeded the authority and power granted by this subsection. If the court declares the recommendation is not reasonable, the neutral evaluation recommendation shall be vacated.

Section 7. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 489 CS

Electrical and Alarm System Contracting

**SPONSOR(S):** Legg

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>14 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> <i>SK</i>	<u>Belcher</u> <i>mb</i>
3) <u>Governmental Operations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) regulates electrical contractors and alarm system contractors, and their employees. The scope of work of an electrical contractor includes alarm systems. The Division of State Fire Marshal (DSFM) within the Department of Financial Services (DFS) may inspect any building or fire alarm system regarding the issues of fire safety, prevention, and control.

The bill amends the definition of an "alarm system contractor" to provide that the term includes any person, firm, or corporation that engages in the business of alarm system contracting under an express or implied contract. It includes persons, firms, or corporations that undertake, offer to undertake, purport to have the authority to undertake, or submit bids to engage in alarm system contracting.

The bill amends the definition of "monitoring" to provide that the electric or electronic signal may originate from any "structure" in lieu of the term "building" used in current law and may originate from outside the state. Individuals that propose to do alarm system monitoring in Florida, even if the alarm system which is monitored is physically located outside the State of Florida, will be required to obtain a license to perform this activity.

Current law requires registration of a person engaged in the business of electrical and alarm contracting. A registered contractor may contract only in the local jurisdiction for which his or her registration is issued. In lieu of registration, a contractor may be certified by the state which allows the contractor to engage in business statewide. The bill specifies additional qualifications for registration to require that a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

The bill exempts an audible fire alarm signal from the requirement in current law that every alarm system installed by a licensed contractor must have a device that automatically terminates the audible signal within 15 minutes of activation. The bill requires the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered.

Currently, persons who install lightning rods and related systems [also referred to as "lightning suppression systems" or "lightning protection systems"] are not specifically required to be licensed nor are they specifically exempted from licensure under part II of chapter 489, F.S. The bill specifically exempts the installation of lightning rods from licensure under this part.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0489c.STA.doc

DATE: 2/13/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Reduce government - Currently, the requirements for registering as an electrical or alarm contractor do not address age limit or moral character qualifications for those desiring to register for a license. The bill specifies statutory qualifications for registration to require that a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The DSFM has limited jurisdiction over alarm system contractors and certified unlimited electrical contractors. The DSFM has authority to order an alarm system contractor to take corrective action to bring alarm systems into compliance with the required fire safety standards in chapter 633, F.S. The DBPR and the ECLB may also participate in these proceedings, at their discretion, but not as a party.

Electrical contractors and alarm system contractors are regulated pursuant to part II, of chapter 489, F.S. Under part II of chapter 489, F.S., the ECLB licenses and regulates electrical contractors, as well as, alarm system contractors. The scope of work of an electrical contractor includes alarm systems. Part of the grounds for disciplinary action by the ECLB includes when the alarm system contractor or certified electrical contractor violates chapter 633, F.S., or the rules of the State Fire Marshal. The DBPR also has authority to issue stop-work orders for work on a project if there is cause to believe that work is being performed by an unlicensed alarm system contractor or unlicensed electrical contractor performing alarm system work.

Section 489.513, F.S., requires registration in the proper classification of any person engaged in the business of electrical or alarm system contracting. A registered contractor may contract only in the local jurisdiction for which his or her registration is issued. Certification by the ECLB permits the contractor to engage in the business of contracting in any jurisdiction in the state.

##### Present situation

Currently, persons who install lightning rods and related systems [also referred to as "lightning suppression systems" or "lightning protection systems"] are not specifically required to be licensed nor are they specifically exempted from licensure under part II of chapter 489, F.S. The bill specifically exempts the installation of lightning rods from licensure under this part.

##### Effect of proposed changes

The bill specifically exempts the installation of lightning rods and related systems from licensure under this part by including this category under the current exemptions already specified in s. 475.503, F.S.

##### Present situation

Under s. 489.505(2), F.S., "alarm system contractor" means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation.

##### Effect of proposed changes

The bill amends the definition of an "alarm system contractor" to include express or implied contracts; persons, firms, or corporations that undertake, offer to undertake, purport to have the authority to undertake, or submit bids to engage in alarm contracting; or a person who engages in the business through others.

#### Present situation

Section 489.505(7), F.S., defines "certified alarm system contractor" to mean an alarm system contractor who possesses a certificate of competency issued by the department. The scope of certification is limited to alarm circuits originating in the alarm control panel and equipment governed by the applicable provisions of Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition. The scope of certification for alarm system contractors also includes the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 77 volts, when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks.

The definition specifies that this provision governing the scope of certification does not create any mandatory licensure requirement.

"Registered electrical contractor" means an electrical contractor who has registered with the ECLB pursuant to fulfilling the competency requirements in the jurisdiction for which the registration is issued. A registered electrical contractor may contract only in the jurisdiction for which his or her registration is issued.

#### Effect of proposed changes

The bill amends the definition of "certified alarm system contractor" to include inspection and monitoring within the scope of the certification. It also increases from 77 volts to 98 volts the voltage limitation applicable to the activities that a certified alarm system contractor may perform. The higher voltage would increase the complexities of alarm systems in residential homes and businesses that perform additional functions for the occupant. These systems require the skill of an individual who has been trained in the electrical field to work on systems rated higher than the current 77 volt limits.

The bill deletes the provision in s. 489.505(7), F.S., that the scope of certification does not create a mandatory licensure requirement. By removing the language, the bill appears to imply that a license is required.

#### Present situation

"Personal emergency response system" means any device which is simply plugged into a telephone jack or electrical receptacle and which is designed to initiate a telephone call to a person who responds to, or has a responsibility to determine the proper response to, personal emergencies. It does not include hard-wired or wireless alarm systems designed to detect intrusion or fire. These systems are exempt from the requirements of part II of chapter 489, F.S.

Pursuant to s. 489.505(27), F.S., "monitoring" means to receive electrical or electronic signals, originating from any building within the state, produced by any security, medical, fire, or burglar alarm, closed circuit television camera, or related or similar protective system and to initiate a response thereto. A person shall not have committed the act of monitoring if:

- (a) The person is an occupant of, or an employee working within, protected premises;
- (b) The person initiates emergency action in response to hearing or observing an alarm signal;
- (c) The person's action is incidental to his or her primary responsibilities; and
- (d) The person is not employed in a proprietary monitoring facility, as defined by the National Fire Protection Association pursuant to rule adopted under chapter 633, F.S.

### Effect of proposed changes

The bill amends the definition of "monitoring" to provide that the electric or electronic signal may originate from any structure in place of the term "building" used in current law. The signal may also originate from outside the state. Individuals that propose to do alarm system monitoring in Florida, even if the alarm system which is monitored is physically located outside the State of Florida, will be required to obtain a license to perform this activity.

### Present situation

Section 489.513, F.S., refers to the requirements for registering locally as an electrical or alarm licensee. Currently, the requirements do not address an age limit or moral character for those desiring to register for a license. Registration allows the individual to work only in the county where the license is issued.

### Effect of proposed changes

The bill amends s. 489.513, F.S. to establish required statutory qualifications for registration as a contractor under part II of chapter 489, F.S. To be registered, a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

The bill specifies that the ECLB may determine that an applicant does not satisfy the good moral character requirement only if there is a substantial connection between the lack of good moral character of the individual and the professional responsibilities of a registered contractor and the ECLB finding of a lack of good moral character is supported by clear and convincing evidence.

If an individual is found unqualified because of a lack of good moral character, the ECLB must furnish the individual with a statement containing the findings of the ECLB, a complete record of the evidence upon which the finding is based, and a notice of the individuals rights to a rehearing and appeal.

### Present situation

Section 489.529, F.S., requires that all residential or commercial intrusion/burglary alarms that have central monitoring must make a verification call to the premises generating the alarm signal before the monitoring personnel contact law enforcement.

### Effect of proposed changes

The bill amends s. 489.529, F.S., to require the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered. The requirement of the monitoring station to employ a call-verification method is designed to reduce the number of false alarms which may also reduce the costs to occupants of premises that must pay when law enforcement personnel respond to false alarms.

### Present situation

Section 489.530, F.S., requires every audible alarm system to have a silencing device which is activated after 15 minutes by some automatic mechanism.

### Effect of proposed changes

Section 489.530, F.S., is amended to exempt an audible fire alarm signal from the requirement that every alarm system installed by a licensed contractor must have a device that automatically terminates

the audible signal within 15 minute of activation. This exemption applies whether the system is installed voluntarily or as a requirement of an adopted code.

**C. SECTION DIRECTORY:**

Section 1. Amends s. 489.503, F.S., to exempt the installation of lightning rods and related systems from licensure under this part.

Section 2. Amends ss. (2), (7), (25), (27), and (28) of s. 489.505, F.S., to amend various definitions.

Section 3. Amends s. 489.513, F.S. to establish required qualifications for registration as a contractor under part II of chapter 489, F.S.

Section 4. Amends s. 489.529, F.S., to require the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered.

Section 5. Amends s. 489.530, F.S., to exempt an audible fire alarm signal from certain requirements.

Section 6. Provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Not anticipated to be significant.

**D. FISCAL COMMENTS:**

There will be no significant fiscal impact to the Department of Business & Professional Regulation.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to



raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill does not grant rule making authority; however, the Electrical Contractors Licensing Board has sufficient rulemaking authority pursuant to s. 489.507, F.S., to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes "the proposed bill mandates that the Board find by clear and convincing evidence that the Subject has not met the "Good Moral Character" requirements. This standard of review is a change from the current "preponderance of evidence" standard of review for license denial cases."

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Business Regulation Committee adopted an amendment on January 26, 2006, and passed the bill as a CS by a unanimous vote. The CS differs from the original bill as follows.

The CS exempts the installation of lightning rods and related systems from licensure under part II of chapter 489, F.S.

The staff analysis reflects the CS.

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CHAMBER ACTION

The Business Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to electrical and alarm system contracting; amending s. 489.503, F.S.; exempting individuals or entities that install or repair lightning rods and related systems from regulation under pt. II of ch. 489, F.S.; amending s. 489.505, F.S.; revising definitions; amending s. 489.513, F.S.; providing additional requirements for registration as a contractor; amending s. 489.529, F.S.; requiring central monitoring stations to employ enhanced call verification methods under certain circumstances; amending s. 489.530, F.S.; exempting fire alarm systems from certain audible alarm requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (21) is added to section 489.503, Florida Statutes, to read:

489.503 Exemptions.--This part does not apply to:

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(21) Individuals or entities that install or repair lightning rods and related systems.

Section 2. Subsections (2), (7), (25), (27), and (28) of section 489.505, Florida Statutes, are amended to read:

489.505 Definitions.--As used in this part:

(2) "Alarm system contractor" means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes. The term also means any person, firm, or corporation that engages in the business of alarm system contracting under an expressed or implied contract; that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of alarm system contracting; or that does, itself or by or through others, engage in the business of alarm system contracting.

(a) "Alarm system contractor I" means an alarm system contractor whose business includes all types of alarm systems for all purposes.

(b) "Alarm system contractor II" means an alarm system contractor whose business includes all types of alarm systems other than fire, for all purposes, except as herein provided.

(7) "Certified alarm system contractor" means an alarm system contractor who possesses a certificate of competency issued by the department. The scope of certification is limited to alarm circuits originating in the alarm control panel and

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equipment governed by the applicable provisions of Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition. The scope of certification for alarm system contractors also includes the installation, repair, fabrication, erection, alteration, addition, inspection, monitoring, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS) ~~77 volts~~, when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks; ~~however, this provision governing the scope of certification does not create any mandatory licensure requirement.~~

(25) "Burglar alarm system agent" means a person:

(a) Who is employed by a licensed alarm system contractor or licensed electrical contractor;

(b) Who is performing duties which are an element of an activity which constitutes alarm system contracting requiring licensure under this part; and

(c) Whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, inspecting, selling ~~onsite~~, or monitoring an intrusion or burglar alarm system for compensation.

(27) "Monitoring" means to receive electrical or electronic signals, originating from any structure ~~building~~ within or outside of the state, regardless of whether those

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80 signals are relayed through a jurisdiction outside of the state,  
81 where such signals are produced by any security, medical, fire,  
82 or burglar alarm, closed circuit television camera, access  
83 control system, or related or similar protective system and are  
84 intended by design to initiate a response thereto. A person  
85 shall not have committed the act of monitoring if:

86 (a) The person is an occupant of, or an employee working  
87 within, protected premises;

88 (b) The person initiates emergency action in response to  
89 hearing or observing an alarm signal;

90 (c) The person's action is incidental to his or her  
91 primary responsibilities; and

92 (d) The person is not employed in a proprietary monitoring  
93 facility, as defined by the National Fire Protection Association  
94 pursuant to rule adopted under chapter 633.

95 (28) "Fire alarm system agent" means a person:

96 (a) Who is employed by a licensed fire alarm contractor or  
97 certified unlimited electrical contractor;

98 (b) Who is performing duties which are an element of an  
99 activity that constitutes fire alarm system contracting  
100 requiring certification under this part; and

101 (c) Whose specific duties include any of the following:  
102 altering, installing, maintaining, moving, repairing, replacing,  
103 servicing, selling ~~onsite~~, or monitoring a fire alarm system for  
104 compensation.

105 Section 3. Subsection (1) of section 489.513, Florida  
106 Statutes, is amended to read:

107 489.513 Registration; application; requirements.--

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(1) Any person engaged in the business of contracting in the state shall be registered in the proper classification, unless he or she is certified. Any person desiring to be a registered contractor shall apply to the department for registration, and:

(a) Be at least 18 years old.

(b) Be of good moral character.

1. "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

2. The board may determine that a person applying for registration is ineligible for failure to satisfy the requirement of good moral character only if:

a. There is a substantial connection between the lack of good moral character of the individual and the professional responsibilities of a registered contractor.

b. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

3. When a person is found to be unqualified because of a lack of good moral character, the board shall furnish the person a statement containing the findings of the board, a complete record of evidence upon which the determination was based, and a notice of the rights of the person to a rehearing and appeal.

Section 4. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm verification calls required.--All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification

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call made to the premises generating the alarm signal, prior to alarm monitor personnel contacting a law enforcement agency for alarm dispatch. The central monitoring station must employ enhanced call verification methods for the premises generating the alarm signal if the first call is not answered. However, if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal, verification calling is not required.

Section 5. Section 489.530, Florida Statutes, is amended to read:

489.530 Audible alarms.--Every audible alarm system installed by a licensed contractor shall have a device to automatically terminate the audible signal within 15 minutes of activation. Fire alarms systems, whether installed voluntarily or as a requirement of an adopted code employing audible fire signals, shall be exempted as required by such code.

Section 6. This act shall take effect July 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 639


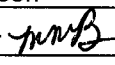
Building Designations

**SPONSOR(S):** Kyle

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1348

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>5 Y, 0 N</u>	<u>Brown</u> 	<u>Williamson</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Dobbs</u>	<u>Belcher</u> 
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill designates an office complex in Lee County as the "Joseph P. D'Allesandro Office Complex" and directs the Department of Management Services to erect suitable markers.

The Department of Management Services estimates a cost of between \$5,000 and \$30,000 to erect the markers. The cost would be paid from the Supervision Trust Fund base budget for operating and maintaining the state office space.

The bill provides an effective date of July 1, 2006.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

The bill does not appear to implicate any of the House Principles.

#### **B. EFFECT OF PROPOSED CHANGES:**

There is an office complex located at 2295 Victoria Avenue in Ft. Myers, currently referred to as the "Ft. Myers Regional Service Center." The bill directs the Department of Management Services, which manages state employee facilities pursuant to Chapter 255, F.S., to erect markers naming the complex the "Joseph P. D'Allesandro Office Complex."

Mr. D'Allesandro is a native of Lee County and served for 33 years as the State Attorney for the 20<sup>th</sup> Judicial Circuit,<sup>1</sup> beginning with its inception in FY 1969-1970. He also is a member of several law enforcement, legal, and community-service associations. He is a graduate of the University of Florida and the Stetson University College of Law.

#### **C. SECTION DIRECTORY:**

Section 1 designates the "Joseph P. D'Allesandro Office Complex."

Section 2 provides a July 1, 2006, effective date.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The Department of Management Services estimates a cost of between \$5,000 to \$30,000 to place "suitable markers."<sup>2</sup>

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>1</sup> The circuit consists of five counties: Charlotte, Collier, Glades, Hendry, and Lee. It is the largest circuit, geographically, in the state.

<sup>2</sup> 2006 Substantive Bill Analysis – HB 639, Department of Management Services, March 16, 2006.

**D. FISCAL COMMENTS:**

The Department of Management Services estimates a cost of between \$5,000 and \$30,000 to erect the markers. The cost would be paid from the Supervision Trust Fund base budget for operating and maintaining the state office space.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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A bill to be entitled  
An act relating to building designations; designating a  
building in Lee County as the Joseph P. D'Alessandro  
Office Complex; directing the Department of Management  
Services to erect suitable markers; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Joseph P. D'Alessandro Office Complex  
designated; Department of Management Services to erect suitable  
markers.--

(1) The State of Florida Office Complex at 2295 Victoria  
Avenue in Fort Myers, Lee County, is designated as the "Joseph  
P. D'Alessandro Office Complex."

(2) The Department of Management Services is directed to  
erect suitable markers designating the Joseph P. D'Alessandro  
Office Complex as described in subsection (1).

Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 825 CS  
**SPONSOR(S):** Altman and others  
**TIED BILLS:**

Financial Literacy Council

**IDEN./SIM. BILLS:** CS/SB 1368

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>12 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> <i>SR</i>	<u>Belcher</u> <i>MB</i>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 825 creates the Financial Literacy Council (Council) as an adjunct to the Department of Financial Services (DFS) to provide information and education about financial issues to consumers and small businesses.

The bill provides for purposes, membership, meetings, and powers and duties. It authorizes the Council to seek resources from a variety of sources to support its efforts. The bill requires submission of an annual report beginning on January 1, 2008. The Council may not continue as a governmental entity after December 31, 2011.

For the 2006-07 fiscal year, the bill appropriates \$50,000 in nonrecurring funds to the Council, from the Administrative Trust Fund within the Department of Financial Services. The budget authority is contingent upon receipt of grant funds or private contributions by the Council for the purpose of this act.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide Limited Government*--the bill creates a new governmental advisory body, the Financial Literacy Council, and appropriates \$50,000 to the Council.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation:**

The elected Chief Financial Officer (CFO) is the head of the Department of Financial Services. Among the CFO's responsibilities are:

- Licensing and oversight of insurance agents and agencies;
- Investigating fraud, including identity theft and securities and insurance fraud;
- Overseeing cemeteries and funeral homes that sell pre-need contracts;
- Overseeing the state's accounting and auditing functions, including review of state contracts and safeguarding unclaimed property;
- Monitoring the investment of state funds and managing the deferred compensation program for state employees; and
- Ensuring that businesses have workers' compensation coverage in place for employees.

Within the DFS, the Financial Services Commission, composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture, oversees the Office of Insurance Regulation and the Office of Financial Regulation.

- The Office of Insurance Regulation is responsible for regulation of all insurance companies and risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, and premium financing.
- The Office of Financial Regulation is responsible for overseeing state-chartered banks, credit unions, financial institutions, finance companies, and the securities industry.

Research indicates that some Floridians would benefit from improving their personal finance practices. A statewide survey of adult Floridians conducted in June 2004 by Mason-Dixon Polling & Research Inc. found:

- More than one-third have more debt than savings or investments;
- About 25% are not putting any money aside each month for retirement;
- More than 80% of Floridians have credit cards, and 35% report current debt levels over \$5,000;
- While 96% of Floridians review their monthly credit card statements, 23% of Floridians have never reviewed their credit reports;<sup>1</sup> and
- Increasing age and income level tends to be associated with smarter personal finance practices.

In the 12 month period ending December 31, 2004, bankruptcy filings in Florida totaled 85,889. There were 1,183 business filings and 84,706 personal filings.<sup>2</sup> These numbers include filings under chapters 7, 11, 12, and 13 of the Bankruptcy Code.

A few of the organizations which currently provide information and education about financial issues to consumers and small businesses include:

- The Florida Council for Economic Education, which is dedicated to improving economic education and financial literacy for students of all ages and abilities throughout the state;<sup>3</sup>

<sup>1</sup> [http://www.yourmoneyyourlife.org/downloads/Mason-Dixon\\_Survey.pdf](http://www.yourmoneyyourlife.org/downloads/Mason-Dixon_Survey.pdf). Margin of error +/- 4%.

<sup>2</sup> [http://www.uscourts.gov/bnkrpctstats/bankrupt\\_f2table\\_dec2004.pdf](http://www.uscourts.gov/bnkrpctstats/bankrupt_f2table_dec2004.pdf)

- Small business development centers, which provide management assistance to current and prospective small business owners;<sup>4</sup>
- The Service Corps of Retired Executives, which offers free counseling to small business owners;<sup>5</sup>
- The Florida JumpStart Coalition, which seeks to improve the personal financial literacy of Floridians by focusing on the state's youth by promoting and teaching personal finance skills so that individuals can make informed, responsible financial decisions;<sup>6</sup> and
- Consumer Credit Counseling Service members, which provide free and affordable confidential money management, financial education, budget counseling, and debt management services to consumers.<sup>7</sup>

### **Effect of Proposed Changes:**

The bill creates the Financial Literacy Council (Council), as defined in s. 20.03, F.S., to study financial problems that affect consumers and small businesses and assist DFS in developing financial literacy programs. The Council shall be an adjunct to DFS and subject to s. 20.052, F.S. The bill provides that the Council's goals are:

- Equipping small businesses, young people, working adults, and seniors with the tools and resources they need to make informed financial decisions;
- Helping residents of the state learn more about personal financial issues, including, but not limited to applying for loans, managing debt, making sound investment choices, and saving for retirement;
- Facilitating the sharing of best practices for financial management that are characteristic of highly successful small businesses; and
- Serving as an educational forum for resource planning, financial planning, and management issues for small businesses.

The bill provides that the Council will be made up of the state Chief Financial Officer, or his or her designee, and not more than 9 other members to be appointed by the CFO as follows:

- Six members must be persons with experience in various sectors of the financial industry, such as financial institutions as defined in law, finance, insurance, real estate, and securities.
- At least one member must be a person who is not employed by and is not a representative of the financial industry;
- At least one member must be chosen from a list of three persons submitted to the CFO by a senior advocacy group; and
- At least one member must be chosen from a list of the persons submitted to the CFO by the Florida Council on Economic Education.

The appointed members are to represent urban and rural interests and the ethnic and cultural diversity of the state's population. The chair of the council is to be elected by the council at its first meeting, which shall be called by the CFO. Each member of the Council will serve without compensation, but receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The bill requires the Council to study financial problems affecting consumers (particularly young persons, seniors, working adults, and small businesses) due to a lack of knowledge of basic financial issues. The Council is to develop written materials to educate consumers and small businesses about basic financial issues and establish an outreach program by providing education through meetings, seminars, or by web-based media.

The bill allows the Council to apply for and accept funds, grants, gifts, and services from the state, the federal government or any of its agencies, or any other public or private source for the purpose of

<sup>3</sup> [www.fcee.org/main.aspx?id=2](http://www.fcee.org/main.aspx?id=2)

<sup>4</sup> [www.sba.gov/sbdc/aboutus.html](http://www.sba.gov/sbdc/aboutus.html)

<sup>5</sup> [www.score.org](http://www.score.org)

<sup>6</sup> [www.fljumpstart.org](http://www.fljumpstart.org)

<sup>7</sup> [www.nfcc.org/AboutUs/nfccfactsbckgnd.pdf](http://www.nfcc.org/AboutUs/nfccfactsbckgnd.pdf)



offsetting any clerical and administrative costs associates with the Council's duties. The bill directs all funds received by the Council to be deposited into the Administrative Trust Fund and provides that the funds are appropriated for use by the Council in carrying out its duties and to defray expenses incurred for administrative duties.

The bill appropriates \$50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

Beginning January 1, 2008, the Council is to report annually to the Governor, the Speaker of the House of Representatives, and the President of the Senate on the activities carried out by the Council.

#### C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law creating the Financial Literacy Council; providing for the purpose of the Council; providing the composition of the Council; providing the procedures for meetings, record keeping, and compensation of members of the Council; providing powers and duties of the Council; establishing provisions for resources for the council; and providing requirements for reports of the Council.

Section 2: Provides an appropriation of \$50,000 in nonrecurring funds to a specific appropriation category, "Financial Literacy Council", to the Council for fiscal year 2006-07, contingent upon receipt of grant funds or private contributions by the Council.

Section 3: Provides an effective date of July 1, 2006, for the bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department of Financial Services indicates that the Council could apply for grant funds.

#### 2. Expenditures:

	<u>FY 2006-07</u>	<u>FY 2007-08</u>
--	-------------------	-------------------

##### Recurring

Administrative Trust Fund  
Reimbursement per diem and  
travel

\$	0	\$ 15,000
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##### Non-Recurring

Administrative Trust Fund  
Florida Literacy Council

\$	50,000	
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### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

**D. FISCAL COMMENTS:**

The bill provides administrative and regulator staff assistance to the Council. Each council member is entitled to reimbursement for per diem and travel expenses (estimated cost, \$250 X 15 members X quarterly Meetings = \$15,000), however the funding source is not defined in this bill. Currently, the funds appropriated to the Department of Financial Services are not specifically allocated to any particular Budget Entity (BE) or program.

The bill appropriates \$50,000 in nonrecurring funds from the Department of Financial Services Administrative Trust Fund to the Council for fiscal year 2006-07, contingent upon receipt of grant funds or private contributions by the Council.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

No exercise of rule-making authority is required to implement the provisions of this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill on March 16, 2006. The amendment conformed the bill to its Senate companion bill, removed redundant language, clarified that the members of the council are eligible to receive reimbursement or per diem and travel expenses, and provided that the chair of the council is to be elected at the first meeting of the council called by the Chief Financial Officer.

The staff analysis reflects the CS.

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CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends  
the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Financial Literacy Council;  
creating the council; providing purposes; providing for  
membership; providing for reimbursement for per diem and  
travel expenses; providing for meetings, procedures, and  
records; providing powers and duties of the council;  
providing for resources of the council; requiring that any  
funds received by the council be deposited in the  
Department of Financial Services Administrative Trust  
Fund; providing for expiration of the council; requiring  
annual reports to the Governor and Legislature; providing  
a contingent appropriation; providing for construction;  
providing a limitation on expenditures of certain grant  
funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Financial Literacy Council.--

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0825-01-c1

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(1) CREATION.--A council, as defined in s. 20.03, Florida Statutes, named the Financial Literacy Council, is created as an adjunct to the Department of Financial Services. The council shall be subject to the provisions of s. 20.052, Florida Statutes.

(2) PURPOSE.--The purpose of the council is to study financial problems that affect consumers, particularly small businesses, young people, working adults, and seniors that arise from a lack of basic knowledge of financial issues and to provide recommendations to the Department of Financial Services which will assist the department in developing financial literacy programs and resources and providing a single state resource for financial literacy for the general public in order to empower individuals and businesses to manage their financial matters in order to reduce debt, increase savings, and avoid bankruptcy. All recommendations are subject to approval by the Chief Financial Officer.

(3) COMPOSITION.--

(a) The council shall consist of nine members who shall be appointed by and serve at the pleasure of the Chief Financial Officer. Six members must be persons having experience in various areas of the financial industry, such as financial institutions as defined in s. 655.005, Florida Statutes, finance, insurance, real estate, and securities. One member must be a person who is not employed by and is not a representative of the financial industry. One member must be chosen from a list of three persons submitted to the Chief Financial Officer by a senior advocacy group. One member must be chosen from a list of

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three persons submitted to the Chief Financial Officer by the  
Florida Council on Economic Education. Members shall include  
persons who represent rural and urban interests and the ethnic  
and cultural diversity of the state's population.

(b) The council shall meet at the call of the chair, who  
shall be elected by vote of a majority of the council at its  
first meeting, which shall be called by the Chief Financial  
Officer. Five of the initial members appointed to the council  
shall serve terms of 3 years each. All other members shall be  
appointed for terms of 4 years. Members shall serve until their  
successors are appointed. Vacancies shall be filled for the  
remainder of the unexpired term in the same manner as the  
original appointment.

(c) Council members shall serve without compensation;  
however, each council member is entitled to reimbursement for  
per diem and travel expenses pursuant to s. 112.061, Florida  
Statutes.

(d) The Department of Financial Services shall provide  
administrative and staff support to the council.

(4) MEETINGS; PROCEDURES; RECORDS.--

(a) The business of the council shall be presented to the  
council in the form of an agenda. The agenda shall be set by the  
Chief Financial Officer and shall include items of business  
requested by the council members.

(b) A majority of the members constitutes a quorum, and  
action by a majority of a quorum shall be official.

(c) The minutes for each meeting shall be submitted to the  
Chief Financial Officer within 14 days after each meeting.

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80        (5) POWERS AND DUTIES.--The council shall:

81        (a) Study financial problems that affect consumers,  
82 particularly young persons, seniors, and working adults, and  
83 small businesses which arise from a lack of basic knowledge of  
84 financial issues.

85        (b) Study and make recommendations to the department  
86 regarding the creation of a single state resource for consumers  
87 and small businesses to contact for financial assistance.

88        (c) Study and make recommendations as to how the  
89 department may help equip small businesses, young people,  
90 working adults, and seniors with the tools and resources they  
91 need to make informed financial decisions.

92        (d) Study and make recommendations as to how the  
93 department may help residents of this state learn more about  
94 personal finance issues, including, but not limited to, personal  
95 savings, applying for loans, managing debt, making sound  
96 investment choices, and saving for retirement.

97        (e) Study and make recommendations to the department  
98 regarding the development of best practices for financial  
99 management which are characteristic of highly successful small  
100 businesses.

101        (f) Study and make recommendations as to how the  
102 department can serve as an educational forum for resource  
103 planning, financial planning, and management issues for small  
104 businesses.

105        (g) Assist the department in developing written materials  
106 that shall be available to educate consumers and small  
107 businesses about basic financial issues.

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(h) Study and make recommendations to the department regarding the establishment of an outreach program to help educate affected persons through public meetings or seminars or through web-based media.

(6) RESOURCES.--

(a) The council may apply for and accept funds, grants, gifts, and services from the state, the government of the United States or any of its agencies, or any other public or private source for the purpose of defraying clerical and administrative costs as necessary to carry out its duties under this section. All sums received by the council shall be deposited into the Department of Financial Services Administrative Trust Fund. The moneys received and deposited into the trust fund are appropriated for use by the council in carrying out its duties as prescribed by this section.

(b) The council shall seek out and, wherever possible, use the talents, expertise, and resources of citizens within the state, and especially those of the public school, community college, and state university systems, in furtherance of its mission.

(c) The council may procure information and assistance from any state agency, political subdivision, municipal corporation, or public officer.

(d) The council may coordinate with any state agency, any political subdivision, or any school district of the state in the furtherance of its mission.

(7) EXPIRATION.--The council shall cease to exist on December 31, 2011. Upon expiration, any funds remaining in the

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Financial Literacy Council account of the Department of  
Financial Services Administrative Trust Fund shall be  
appropriated to the department to fund the activities that the  
department has implemented pursuant to the recommendations of  
the council.

(8) REPORTS.--Beginning January 1, 2008, the council shall  
report annually on January 1 to the Governor, the President of  
the Senate, and the Speaker of the House of Representatives on  
the activities carried out under this section, including  
expenditures and funding.

Section 2. For the 2006-2007 fiscal year, the sum of  
\$50,000 in nonrecurring funds is appropriated from the  
Department of Financial Services Administrative Trust Fund in  
the specific appropriation category "Financial Literacy Council"  
to the Financial Literacy Council created by this act. The  
appropriation is contingent upon prior receipt of grant funds or  
private contributions by the council for the purposes of this  
act. This section does not entitle the Financial Literacy  
Council to expend funds from the Administrative Trust Fund in an  
amount greater than the amount of grant funds or private  
contributions received by the council and deposited into the  
Administrative Trust Fund pursuant to this act.

Section 3. This act shall take effect July 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1135 CS

Practice of Architecture

**SPONSOR(S):** Hukill

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> <i>SR</i>	<u>Belcher</u> <i>MB</i>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design (board) under the Department of Business and Professional Regulation (DBPR). Practitioners must meet licensure requirements in order to legally practice their profession. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture. "Registered interior designer" or "interior designer" means a natural person who is licensed under this part to provide interior design services.

The bill:

- creates a definition of "responsible supervising control" to mean "The exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee hereunder;"
- specifies, by definition, that "responsible supervising control" does not mean the "review of documents, instruments of service, or any other work requiring the seal and signature of a licensee [architect or interior designer] after such work has been performed by a person not licensed hereunder working outside of the licensee's office;" and
- authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" or "Interior Designer, Retired", as applicable, but may not otherwise render any professional services.

The bill creates no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Current regulation of professions is carried out by DBPR, in part, by licensing practitioners. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or a commission. Regulation is intended to protect the public by ensuring that licensed professionals meet prescribed standards of education, competency, and practice. Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR.

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Practitioners must meet licensure requirements in order to legally practice their profession. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.

Interior design is defined in the chapter to mean

designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects life safety systems pertaining to fire safety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

"Registered interior designer" or "interior designer" means a natural person who is licensed under this part.

Various acts constitute grounds for which the disciplinary actions may be taken, including:

- a Florida-registered architect failing to ensure the responsible supervising control of services or projects, as required by board rule, and
- a Florida-registered interior designer failing to exercise responsible supervisory control over services or projects, as required by board rule.

When the board finds a practitioner guilty of specified acts, it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure; (b) Revocation or suspension of a license; (c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense and a fine of up to \$5,000 for matters pertaining to a material violation of the Florida Building Code as reported by a local jurisdiction; (d) Issuance of a reprimand; (e) Placement of the registered architect on probation for a period of time and subject to such conditions as the board may specify, including requiring the registered architect to attend continuing education courses or to work under the supervision of another registered architect; or (f) Restriction of the authorized scope of practice by the registered architect.

#### Effect of proposed changes

The bill creates a definition of "responsible supervising control" to mean:

"The exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee under this part."

By definition, the bill also specifies that "responsible supervising control" does not mean the review of documents, instruments of service, or any other work requiring the seal and signature of a licensee [architect or interior designer] after such work has been performed by a person not licensed under this part working outside of the licensee's office.

The bill authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "architect, retired" or "interior designer, retired", as applicable, but may not otherwise render any professional services.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 481.203, F.S., to define "responsible supervising control."

Section 2. Amends s. 481.223, F.S., to allow the use of the title "architect, retired and interior designer, retired," as applicable.

Section 3. Provides an effective date of July 1, 2006 for the bill.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 16, 2006, the Business Regulation Committee adopted one strike all amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

- Removes language in the original bill: defining "administration of construction contracts;" prohibiting construction without an architect providing construction contract administration services; imposing disciplinary actions for certain circumstances; allowing a professional engineer to perform construction contract administration services relative to engineering.
- Defines the term "responsible supervising control."
- Adds the authority for an interior designer to use the title "interior designer, retired."

This bill analysis has been updated to reflect these changes.

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CHAMBER ACTION

The Business Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the practice of architecture and interior design; amending s. 481.203, F.S.; defining "responsible supervising control"; amending s. 481.223, F.S.; authorizing certain architects to use the title "Architect, Retired" and certain interior designers to use the title "Interior Designer, Retired"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (16) is added to section 481.203, Florida Statutes, to read:

481.203 Definitions.--As used in this part:

(16) "Responsible supervising control" means the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a person licensed under this part. Review of documents, instruments of service, or any

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other work requiring the seal and signature of a person licensed under this part after such work has been performed by a person not licensed under this part working outside the office of the person licensed under this part shall not be deemed responsible supervising control.

Section 2. Paragraphs (a) and (b) of subsection (1) of section 481.223, Florida Statutes, are amended to read:

481.223 Prohibitions; penalties; injunctive relief.--

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, an architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services;

(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services;

Section 3. This act shall take effect July 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7185      PCB GO 06-34      Procurement of Contractual Services by a State Agency  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N	Brown	Williamson
1) State Administration Appropriations Committee		Dobbs <i>DD</i>	Belcher <i>MB</i>
2) State Administration Council			
3)			
4)			
5)			

### SUMMARY ANALYSIS

The bill creates a governor appointed seven member Council on Efficient Government within the Department of Management Services (DMS). The council reviews, establishes policy, and consults on outsourcing projects initiated by state agencies. Cabinet agencies are expressly included in these requirements.

The bill creates outsourcing levels based on project costs and creates business case requirements for each level. The bill identifies specific criteria for business cases and specific criteria for outsourcing contracts.

The bill grants rulemaking authority to DMS to establish the criteria for certifying employees as contract negotiators.

The bill creates language governing lobbying by providers during and after contract solicitations and awards.

The bill abolishes the State Council on Competitive Government, created by s. 14.203, F.S.

The bill sets rules for the supervision of state employees.

The bill provides 10 full-time equivalent positions and \$1.75 million in recurring General Revenue to DMS in support of the council. Of the amount, \$500,000 is provided for the establishment of a Project Management Professionals training program.

Modifies s. 119.071, F.S., to conform this section of statute with the repeal of s. 14.203, F.S., in the bill.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present situation**

Since the 1950's, Florida has statutorily required competitive bidding in state procurement.<sup>1</sup> Through the years, the Legislature has amended the requirements numerous times with control over the procurement process passing from the State Purchasing Commission to the Department of General Services, now known as the Department of Management Services (DMS).<sup>2</sup>

Currently, Part I of Chapter 287, F.S., sets forth the requirements for the procurement of commodities and contractual services by state agencies. The law directs DMS, as the centralized authority, to oversee the implementation of competitive bidding requirements and to create uniform rules for procurement. The purchasing process also is partly decentralized. Except in the cases where state term contracts exist, agencies may buy commodities and contractual services themselves.<sup>3</sup>

As the state has increasingly shifted to external provision of services,<sup>4</sup> it has occasionally experienced challenges in ensuring that the desired results are achieved. Recent studies and audits suggest that the state's procurement process for large and complex outsourcing initiatives could be improved:

- In June 2003, the Governor's Chief Inspector General released an audit report entitled "A Road Map to Excellence in Contracting."<sup>5</sup> It found problems with procurement, particularly with performance monitoring, procurement methodologies, and contract writing. The report suggested a variety of solutions, including revising Ch. 287, F.S., establishing a negotiations training program, and facilitating interagency communication among procurement staff.
- In January 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report entitled "The Legislature Could Strengthen State's Privatization<sup>6</sup> Accountability Requirements."<sup>7</sup> OPPAGA concurred with the Chief Inspector General's June 2003 findings and suggested Legislative actions including mandating the use of business cases, strengthening requirements for performance contracting, and strengthening oversight of agency privatization initiatives.
- Various reports by the Auditor General have identified problems. For example:
  - In the MyFloridaAlliance initiative of the State Technology Office (STO) involving outsourcing multiple functions, the STO had not conducted full feasibility studies, cost analyses, or risk assessments to determine if the outsourcing of these functions would provide the best value to the state. Additionally, the information provided in the solicitation documents did not provide sufficient detail about the STO operations, services, and the

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<sup>1</sup> See generally Ch. 287, F.S.

<sup>2</sup> Relatively recent substantial changes include Ch. 82-196, L.O.F. (submitting contractual services to competition requirements), Ch. 92-279, L.O.F. (creating the Department of Management Services from the previous Department of General Services and Department of Administration), and Ch. 2002-207, L.O.F. (introducing Invitation to Negotiate language and procedures).

<sup>3</sup> Section 287.056, F.S.

<sup>4</sup> The last-available data from the Center for Efficient Government documented at least 138 outsourcing projects undertaken between January 1999 and June 2004.

<sup>5</sup> Available online here: [http://www.myflorida.com/eog/inspector\\_general/reports.html](http://www.myflorida.com/eog/inspector_general/reports.html).

<sup>6</sup> OPPAGA uses "privatization" as a generic term encompassing such techniques and activities as contracting out, outsourcing, and public-private partnerships.

<sup>7</sup> Available online here: <http://www.oppaga.state.fl.us/reports/pdf/0402rpt.pdf>.

program requirements to allow for a responsible vendor to adequately respond to the specified key initiatives. The contracts with Accenture and BearingPoint lacked certain provisions to adequately protect state resources.<sup>8</sup> The STO subsequently cancelled the contracts.

- In the DMS procurement of the MyFloridaMarketplace e-procurement system, the department's planning process did not include timely completion of a cost-benefit analysis or risk assessment.
- In the Department of Business and Professional Regulation On-line Licensing and Call Center Services procurement, the department did not perform a feasibility study for the procurement's Application Management Services component.<sup>9</sup> Additionally, the contract, which is funded through a shared-savings model, failed to provide specifics about how to calculate cost savings and how the savings would be divided.<sup>10</sup>
- The Inspector General of DMS has identified similar problems regarding correctional privatization. In its 2005 internal audit,<sup>11</sup> the DMS Inspector General identified serious deficiencies including:
  - Failure to enforce contract provisions;
  - Allowing vendors to waive contract requirements without adjusting payments to vendors;
  - Making over \$1 million in overpayments to vendors without any attempt to recover the overpayments; and
  - Allowing vendors to bill for inflated per-diem and maintenance costs.

#### Previous Initiatives to Improve Outsourcing

The Governor issued an Executive Order on March 11, 2004, creating the Center for Efficient Government (Center) within DMS.<sup>12</sup> The executive order stated that the Center was the "enterprise wide gateway for best business practices in order to improve the way state agencies deliver services to Florida's citizens." The order required the Center to:

- Establish a five-member oversight panel made up of agency heads;
- Create a centralized, multi-stage, gate process for the review, evaluation, and approval of agency outsourcing<sup>13</sup> initiatives;
- Provide documentation at the completion of each stage to the Legislature prior to initiation of the next stage;
- Review past outsourcing projects for best business practices and existing outsourcing plans to ensure agency compliance with center standards;
- Maintain a database with information about initiatives being performed by contractors that includes a description of the work being performed, applicable performance measures, and contractor and subcontractor identification; and
- Implement a program to transition impacted state employees.

The Center's policies required all agency outsourcing projects to undergo a sequential review and validation process, referred to as the "Gate Process." The oversight board, however, only reviewed and validated projects with an estimated value of more than \$10 million per fiscal year and enterprise-wide projects proposed by the center. As an agency completed each stage, the oversight board was to review the agency's progress and determine whether to validate that progress so that the agency could

<sup>8</sup> Auditor General Report No. 2005-08, *State Technology Office: MyFlorida Alliance Operational Audit*, July 2004.

<sup>9</sup> Auditor General Report No. 2002-112, *On-Line Licensing System & Call Center Services Agreement- Department of Business & Professional Regulation - Operational Audit*, December 2001.

<sup>10</sup> Auditor General Report No. 2004-112, *Department of Business & Professional Regulation - On-Line Licensing System & Call Center Services Agreement Operational Audit*, January 2004.

<sup>11</sup> Department of Management Services Internal Audit Report Number 2005-61, *Contract Management of Private Correctional Facilities*, June 30, 2005, pages i - iii.

<sup>12</sup> Executive Order 04-45.

<sup>13</sup> The center defined an "outsourced function or service" as "one which was previously performed by state employees and is now operated by a third party entity while the state remains fully responsible for the provision of affected services and maintains control over management and policy decisions." *Center for Efficient Government FAQ's*.

continue to the next stage. However, the board had no authority to accept or deny a project, or challenge the documentation provided by an agency.

The Center began operations in April 2004. The Executive Order stated that it was to continue until January 3, 2007. However, the Governor's veto of SB 1146 on June 27, 2005, effectively prohibited any further funding of the Center.

As a result of the 2003 "Road Map to Excellence" report, DMS began a series of training classes for purchasing employees. The Public Purchasing Training and Certification program<sup>14</sup> trains Purchasing Agents, Purchasing Managers, Certified Contract Managers, and Certified Negotiators. DMS reports that 108 employees out of approximately 700 have completed at least one of these series.<sup>15</sup>

## **Proposed Changes**

### The Florida Efficient Government Act

The bill implements the Florida Efficient Government Act (the "Act"). The intent of the Act is to ensure that state agencies, including cabinet agencies, focus on core missions and contract with private-sector vendors, "whenever vendors can more effectively and efficiently provide services and reduce the cost of government." In order to ensure this efficiency, the Act requires agencies to create detailed business cases for all outsourcing projects. These projects are broken down into three levels: those under \$1 million in all years of the contract, those between \$1 million and \$10 million in any fiscal year, and those over \$10 million in any fiscal year. Each level has its own set of requirements.

Some contracts are exempt from the Act. Contracts made pursuant to s. 287.057(5) (e),<sup>16</sup> (f),<sup>17</sup> and (g),<sup>18</sup> F.S., are exempt, as are contracts made under s. 287.057(22), F.S.<sup>19</sup> In addition, contracts made under the Consultants' Competitive Negotiation Act<sup>20</sup> are exempt, as are road construction contracts let by the Department of Transportation.

### The Council for Efficient Government

The Act creates the Council on Efficient Government (the "Council"). The council is tasked with reviewing business cases submitted by agencies, advising agencies on outsourcing projects, and issuing advisory opinions to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Council consists of seven members:

- The Secretary of DMS;
- A cabinet member other than the Governor;
- Two executive-branch agency heads; and
- Three members from the private sector, having complex, large-scale project-implementation experience.

The council is appointed by the Governor and confirmed by the Senate, pursuant to s. 20.052(5), F.S. The bill directs the council to comply with all necessary requirements contained in s. 20.052(3) and (4), F.S., including staggered appointments and compliance with all public records and public meetings laws. The council is headed by a director appointed by the Secretary of DMS, and DMS is tasked with administrative support.

<sup>14</sup> See generally [http://dms.myflorida.com/purchasing/florida\\_s\\_public\\_purchasing\\_training\\_and\\_certification](http://dms.myflorida.com/purchasing/florida_s_public_purchasing_training_and_certification).

<sup>15</sup> Names of the employees certified under each category are available online at:

[http://dms.myflorida.com/dms/purchasing/florida\\_s\\_public\\_purchasing\\_training\\_and\\_certification/florida\\_purchasing\\_certification\\_holders](http://dms.myflorida.com/dms/purchasing/florida_s_public_purchasing_training_and_certification/florida_purchasing_certification_holders).

<sup>16</sup> Certain medical devices.

<sup>17</sup> Personal services contracts (i.e., lectures by individuals, artistic services, legal services).

<sup>18</sup> Continuing education events offered to the general public.

<sup>19</sup> A contract with an independent, non-profit accredited college or university, when such contract is made "on the same basis as [the agency] may contract with any state university or college."

<sup>20</sup> Section 287.055, F.S. The CCNA covers architectural, engineering, and other construction-related services.

## Business Case Requirements

The Council is directed to receive business cases from an agency for each outsourcing project the agency wishes to undertake. The contents of the required business case include:

- A description of the service to be provided;
- An analysis of the agency's current "in-house" performance of the service;
- The goals and rationale of the project;
- A citation of the legal authority underpinning the project;
- A description of available options for achieving the stated goals;
- An analysis of the advantages and disadvantages of each option;
- A description of the current marketplace for the services;
- A detailed cost-benefit analysis;
- A change management plan regarding the current and future processes involved, among all potentially affected agencies;
- A description of appropriate performance standards;
- Projected timeframes for key events;
- Public records compliance plans;
- Contingency plans for non-performance;
- A transition plan for affected state employees; and
- A description of legislative and budgetary actions necessary to accomplish the project.

For contracts less than \$1 million in all fiscal years, a business case must be submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives after the agency has negotiated with the vendor, but 30 days before the contract is signed with the vendor. For contracts between \$1 million and \$10 million in any fiscal year, an initial business case must be submitted 30 days before the solicitation is released. This is followed by a final business case, to be submitted at least 30 days before the contract is signed. For contracts in excess of \$10 million in any fiscal year, the initial business case must be submitted 60 days in advance of the agency's solicitation, and the council must respond to the agency by providing its own evaluation of the business case within 30 days of the solicitation.<sup>21</sup> As in the other project levels, a final business case must be submitted after the negotiation but before the contract is signed.

## Contract Requirements

The Act also addresses contracts issued by agencies. In addition to current contract requirements,<sup>22</sup> outsourcing contracts must contain:

- A detailed scope of work;
- A service level agreement describing all requirements and responsibilities of the contractor;
- A cost-schedule, payment terms, and other financial items;
- A specific transition implementation schedule;
- Clear and specific identification of all required performance standards;
- Specific accounting requirements;
- Clear and specific records-access provisions;
- A requirement that the contractor interview and consider for employment all affected state employees; and
- A requirement to include a contingency plan in the event of nonperformance by the contractor.

The bill provides that contractors may not be prohibited from lobbying the executive or legislative branch with regard to a current contract held by the contractor. A contractor may not knowingly be involved in the agency's purchase of services from a company in which the contractor has a material

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<sup>21</sup> The council's report also is sent to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

<sup>22</sup> See generally s. 287.058, F.S.

interest. The bill also provides that contract personnel may not direct the employment activities of state employees.

### Negotiation & Rulemaking

For any contract in excess of \$1 million dollars, at least one of the persons conducting the negotiations for the state must be certified as a contract negotiator.<sup>23</sup> If the value of the contract is in excess of \$10 million dollars, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

As part of the negotiation certification process, DMS is granted rulemaking authority to ensure that certified contract negotiators are knowledgeable about negotiation strategies, capable of effectively implementing those strategies, and involved appropriately in the larger procurement process. The rulemaking authority is specifically detailed to address:

- The qualifications required for certification;
- The method of certification; and
- The procedure for involving the certified negotiator.

### Other Issues

All solicitations are required to contain a “no contact” provision ensuring that contractors do not attempt to influence or discuss an active solicitation with purchasing employees. Inappropriate contact may be grounds for rejecting a bidder’s submission. Current statutes do not address the issue of improper contact, although DMS forms contain language implementing a specific question-and-answer process.<sup>24</sup>

Renewals and extensions of current contracts over \$10 million are not permitted before the agency submits a written report regarding the contractor’s performance to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The bill prohibits contract personnel from serving in a supervisory role for state employees.

The bill repeals s. 14.203, F.S., establishing the State Council on Competitive Government.

The bill modifies s. 119.071, F.S., to conform this section of statute with the repeal of s. 14.203, F.S., in the bill.

### C. SECTION DIRECTORY:

Section 1 amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 2 creates s. 287.0571, F.S., creating the Florida Efficient Government Act.

Section 3 creates s. 287.05721, F.S., providing definitions for the Florida Efficient Government Act.

Section 4 creates s. 287.0573, F.S., establishing the Council on Efficient Government.

Section 5 creates s. 287.0574, F.S., detailing the business case required for each level of outsourcing projects; providing additional contract requirements for such projects.

Section 6 amends s. 287.058, F.S., clarifying a contractor's ability to lobby the government concerning the scope of services already provided by the contractor.

<sup>23</sup> Additional requirements for negotiation teams can be found at s. 287.057(17)(b), F.S.

<sup>24</sup> See Form PUR 1001, paragraph 5.

Section 7 creates section 287.074, F.S., relating to actions by contractor personnel and state personnel.

Section 8 prohibits a contractor from participating in agency procurements in which the contractor has a material interest.

Section 9 repeals s. 14.203, F.S., relating to the State Council on Competitive Government.

Section 10 provides funding for 10 full-time equivalent positions in the council.

Section 11 provides funding for Project Management Professional training.

Section 12 expressly includes cabinet agencies in the provisions of the act.

Section 13 amends s. 119.071, F.S., relating to public records exemptions to conform with the repeal of s. 14.203, F.S.

Section 14 provides that the act shall take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Department of Management Services  
General Revenue Fund

FY 2006-07

Recurring Costs:

Qualified Expenditure Category (10 FTE)	\$1,250,000
Negotiation Training	<u>500,000</u>

Total – recurring	\$1,750,000
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### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

DMS is granted rulemaking authority to establish a negotiation certification program. DMS is authorized to set the qualifications required for negotiation certification, the method by which employees attain certification, and the procurement procedures for involving a certified negotiator, during the purchasing process.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

Lines 257 and 258 should be changed to state that the Secretary of DMS shall appoint an executive director.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.



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1                                   A bill to be entitled

2       An act relating to procurement of contractual services by

3       a state agency; amending s. 287.057, F.S.; prohibiting a

4       state agency from renewing or amending a contract for

5       outsourcing under certain conditions; requiring certain

6       qualifications for persons chosen to conduct negotiations

7       during specified procurements; requiring the Department of

8       Management Services to adopt rules governing those

9       qualifications; requiring that a specified statement be

10      included in procurements of commodities and services which

11      prohibits contact between respondents and specified

12      employees of the executive and legislative branches;

13      creating s. 287.0571, F.S.; creating the Florida Efficient

14      Government Act; providing legislative intent; providing

15      that procurements of specified commodities and services

16      are not subject to the act; creating s. 287.05721, F.S.;

17      providing definitions; creating s. 287.0573, F.S.;

18      creating the Council on Efficient Government within the

19      Department of Management Services; providing the purpose

20      and membership of the council; providing duties and

21      responsibilities of the council; requiring the council to

22      review and issue advisory reports on certain state agency

23      procurements; requiring the department to employ adequate

24      number of staff; requiring the council to be headed by a

25      director appointed by the Secretary of Management

26      Services; requiring state agencies to submit materials

27      required by the council; creating s. 287.0574, F.S.;

28      providing requirements for certain business cases to

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outsourcing by a state agency; requiring a state agency to develop a business case that describes and analyzes a contractual services procurement under consideration; providing that the business case is not subject to challenge or protest under the Administrative Procedure Act; providing required components of a business case; providing contract requirements for an outsourcing procurement; amending s. 287.058, F.S.; providing that a contract may not prohibit a contractor from lobbying the executive or legislative branches concerning specified contract issues, within specified time lines; creating s. 287.074, F.S.; requiring that only public officers or employees shall perform certain functions; prohibiting a contractor from participating in the procurement of contractual services by a state agency; repealing s. 14.203, F.S., which creates the State Council on Competitive Government and provides duties and authority of the council; providing appropriations; providing that certain state agencies are subject to the act; amending s. 119.071, F.S.; removing a cross-reference; clarifying the meaning of "commercial activity" to conform to the removal of the reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (14) and paragraph (b) of subsection (17) of section 287.057, Florida Statutes, are amended, and subsection (26) is added to that section, to read:

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57           287.057 Procurement of commodities or contractual  
58 services.--

59           (14)(a) Contracts for commodities or contractual services  
60 may be renewed for a period that may not exceed 3 years or the  
61 term of the original contract, whichever period is longer.  
62 Renewal of a contract for commodities or contractual services  
63 shall be in writing and shall be subject to the same terms and  
64 conditions set forth in the initial contract. If the commodity  
65 or contractual service is purchased as a result of the  
66 solicitation of bids, proposals, or replies, the price of the  
67 commodity or contractual service to be renewed shall be  
68 specified in the bid, proposal, or reply. A renewal contract may  
69 not include any compensation for costs associated with the  
70 renewal. Renewals shall be contingent upon satisfactory  
71 performance evaluations by the agency and subject to the  
72 availability of funds. Exceptional purchase contracts pursuant  
73 to paragraphs (5)(a) and (c) may not be renewed. With the  
74 exception of subsection (13), if a contract amendment results in  
75 a longer contract term or increased payments, a state agency may  
76 not renew or amend a contract for the outsourcing of a service  
77 or activity that has an original term value exceeding the sum of  
78 \$10 million before submitting a written report concerning  
79 contract performance to the Governor, the President of the  
80 Senate, and the Speaker of the House of Representatives at least  
81 90 days before execution of the renewal or amendment.

82           (17) For a contract in excess of the threshold amount  
83 provided in s. 287.017 for CATEGORY FOUR, the agency head shall  
84 appoint:

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(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. When the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon rules adopted by the Department of Management Services in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator. If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

(26) Each solicitation for the procurement of commodities or contractual services shall include the following provision: "Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the execution of the resulting contract, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for

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113 rejecting a response."

114       Section 2.   Section 287.0571, Florida Statutes, is created  
115 to read:

116       287.0571   Applicability of ss. 287.0571-287.0574.--

117       (1)   Sections 287.0571-287.0574 may be cited as the  
118 "Florida Efficient Government Act."

119       (2)   It is the intent of the Legislature that each state  
120 agency focus on its core mission and deliver services  
121 effectively and efficiently by leveraging resources and  
122 contracting with private-sector vendors whenever vendors can  
123 more effectively and efficiently provide services and reduce the  
124 cost of government.

125       (3)   It is further the intent of the Legislature that  
126 business cases to outsource be evaluated for feasibility, cost-  
127 effectiveness, and efficiency before a state agency proceeds  
128 with any outsourcing of services.

129       (4)   Sections 287.0571-287.0574 do not apply to:

130       (a)   A procurement of commodities and contractual services  
131 listed in s. 287.057(5) (e), (f), and (g) and (22).

132       (b)   A procurement of contractual services subject to s.  
133 287.055.

134       (c)   A contract in support of the planning, development,  
135 implementation, operation, or maintenance of the road, bridge,  
136 and public transportation construction program of the Department  
137 of Transportation.

138       (d)   A procurement of commodities or contractual services  
139 which does not constitute an outsourcing of services or  
140 activities.

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Section 3. Section 287.05721, Florida Statutes, is created to read:

287.05721 Definitions.--As used in ss. 287.0571-287.0574, the term:

(1) "Council" means the Council on Efficient Government.

(2) "Outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.

Section 4. Section 287.0573, Florida Statutes, is created to read:

287.0573 Council on Efficient Government; membership; duties.--

(1) There is created a Council on Efficient Government within the Department of Management Services to review, evaluate, and issue advisory reports on business cases submitted to the council as specified in this section.

(2) The council shall consist of seven members appointed by the Governor pursuant to s. 20.052 and confirmed by the Senate:

(a) The Secretary of Management Services, who shall serve as chair.

(b) A Cabinet member other than the Governor, or his or her senior management or executive staff designee.

(c) Two heads of executive branch agencies.

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(d) Three members from the private sector who, collectively, have experience with procurement, successfully increasing operational efficiency, and implementing complex projects in the private-sector business environment. A private-sector member of the council may not at any time during his or her appointment to the council be registered to lobby the executive or legislative branch.

(3) Within 45 days after the effective date of this section, the Governor shall appoint two private-sector members and two state agency heads for terms of 1 year and one private-sector member and two agency heads for terms of 2 years. Thereafter, each member shall be appointed for a term of 2 years. The private-sector members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(4) A state agency member of the council may not participate in a council review of a business case to outsource if his or her state agency is conducting the proposed outsourcing. A private-sector member of the council may not participate in a council review of a business case to outsource if he or she has a business relationship with an entity that is involved or could potentially be involved in the proposed outsourcing.

(5) A member of the council, except the Cabinet member, may not delegate his or her membership to a designee.

(6) A quorum shall consist of at least four members, including at least two private-sector members.

(7) Any vacancy on the council shall be filled in the same

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manner as the original appointment, and any member appointed to  
fill a vacancy occurring for a reason other than the expiration  
of a term shall serve only for the unexpired term of the  
member's predecessor.

(8) The council shall:

(a) Employ a standard process for reviewing business cases  
to outsource.

(b) Review and evaluate business cases to outsource as  
requested by the Governor or the state agency head whose agency  
is proposing to outsource or as required by ss. 287.0571-  
287.0574 or by law.

(c) No later than 30 days before a state agency's issuance  
of a solicitation of \$10 million or more, provide to the agency  
conducting the procurement, the Governor, the President of the  
Senate, and the Speaker of the House of Representatives an  
advisory report for each business case reviewed and evaluated by  
the council. The report must contain all versions of the  
business case, an evaluation of the business case, any relevant  
recommendations, and sufficient information to assist the state  
agency proposing to outsource in determining whether the  
business case to outsource should be included with the  
legislative budget request.

(d) Recommend and implement standard processes for state  
agency and council review, including the development of  
templates for use by state agencies in submitting business cases  
to the council, and evaluate state agency business cases to  
outsource.

(e) Develop standards and best-practice procedures for use



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by state agencies in evaluating business cases to outsource.

(f) Recommend standards, processes, and guidelines for use by state agencies in developing business cases to outsource.

(g) Incorporate any lessons learned from outsourcing services and activities into council standards, procedures, and guidelines, as appropriate, and identify and disseminate to agencies information regarding best practices in outsourcing efforts.

(h) Develop, in consultation with the Agency for Workforce Innovation, guidelines for assisting state employees whose jobs are eliminated as a result of outsourcing.

(i) Identify and report yearly to the Legislature on innovative methods of delivering government services which would improve the efficiency, effectiveness, or competition in the delivery of government services, including, but not limited to, enterprise-wide proposals.

(j) Report to the Legislature, yearly, on the outsourcing efforts of each state agency. Such reporting shall include, but need not be limited to, the number of outsourcing business cases and solicitations generated by each state agency, the number and dollar value of outsourcing contracts by each state agency, and the status of extensions, renewals, and amendments of state agency outsourcing contracts.

(9) The council shall make available to the Governor and the Legislature minutes of all meetings, a summary report on each proposal that describes funding options, including the need for any budget amendments or new appropriations, and an annual report of the activities and recommendations of the council.

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(10) The department shall employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of this act.

(11) The council shall be headed by a director appointed by the secretary.

(12) Each state agency shall submit to the council all information, documents, or other materials required by the council or this chapter.

Section 5. Section 287.0574, Florida Statutes, is created to read:

287.0574 Business cases to outsource; review and analysis; requirements.--

(1) A business case to outsource having a projected cost exceeding \$10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 60 days before a solicitation is issued. The council shall evaluate the business case analysis and submit the evaluation to the state agency, the Governor, the President of the Senate, and the Speaker of the House of Representatives when the business case evaluation is completed, but at least 30 days before issuing a solicitation.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the Governor, the President of the Senate, and the Speaker of

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the House of Representatives.

(2) A proposal to outsource having a projected cost that ranges from \$1 million to \$10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submission of the business case at least 30 days before issuing a solicitation to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(3) A business case to outsource having a projected cost that is less than \$1 million in any fiscal year shall require a final business case analysis conducted by the state agency after the conclusion of any negotiations and provided at least 30 days before execution of a contract to the council. The council shall provide such business cases in its annual report to the Legislature.

(4) For any proposed outsourcing, the state agency shall develop a business case that justifies the proposal to outsource. In order to reduce any administrative burden, the council may allow a state agency to submit the business case in the form required by the budget instructions issued pursuant to s. 216.023, augmented with additional information if necessary, to ensure that the requirements of this section are met. The

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business case is not subject to challenge or protest pursuant to  
chapter 120. The business case must include, but need not be  
limited to:

(a) A detailed description of the service or activity for  
which the outsourcing is proposed.

(b) A description and analysis of the state agency's  
current performance, based on existing performance metrics if  
the state agency is currently performing the service or  
activity.

(c) The goals desired to be achieved through the proposed  
outsourcing and the rationale for such goals.

(d) A citation to the existing or proposed legal authority  
for outsourcing the service or activity.

(e) A description of available options for achieving the  
goals.

(f) An analysis of the advantages and disadvantages of  
each option, including, at a minimum, potential performance  
improvements and risks.

(g) A description of the current market for the  
contractual services that are under consideration for  
outsourcing.

(h) A cost-benefit analysis documenting the direct and  
indirect specific baseline costs, savings, and qualitative and  
quantitative benefits involved in or resulting from the  
implementation of the recommended option or options. Such  
analysis must specify the schedule that, at a minimum, must be  
adhered to in order to achieve the estimated savings. All  
elements of cost must be clearly identified in the cost-benefit

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analysis, described in the business case, and supported by  
applicable records and reports. The state agency head shall  
attest that, based on the data and information underlying the  
business case, to the best of his or her knowledge, all  
projected costs, savings, and benefits are valid and achievable.  
As used in this section, the term "cost" means the reasonable,  
relevant, and verifiable cost, which may include, but is not  
limited to, elements such as personnel, materials and supplies,  
services, equipment, capital depreciation, rent, maintenance and  
repairs, utilities, insurance, personnel travel, overhead, and  
interim and final payments. The appropriate elements shall  
depend on the nature of the specific initiative. As used in this  
section, the term "savings" means the difference between the  
direct and indirect actual annual baseline costs compared to the  
projected annual cost for the contracted functions or  
responsibilities in any succeeding state fiscal year during the  
term of the contract.

(i) A description of differences among current state  
agency policies and processes and, as appropriate, a discussion  
of options for or a plan to standardize, consolidate, or revise  
current policies and processes, if any, to reduce the  
customization of any proposed solution that would otherwise be  
required.

(j) A description of the specific performance standards  
that must, at a minimum, be met to ensure adequate performance.

(k) The projected timeframe for key events from the  
beginning of the procurement process through the expiration of a  
contract.

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(l) A plan to ensure compliance with the public records law.

(m) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(n) A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.

(o) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

(p) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

(5) In addition to the contract requirements provided in s. 287.058, each contract resulting from an outsourcing must include, but need not be limited to:

(a) A detailed scope of work which clearly specifies each service or activity to be provided, including a description of each deliverable that is quantifiable, measurable, and verifiable.

(b) A service-level agreement describing all services to be provided under the terms of the agreement, the state agency's service requirements and performance objectives, and specific responsibilities of the state agency and the contractor.

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393        (c) Associated costs, specific payment terms and payment  
394        schedules, including incentive and financial disincentive  
395        provisions, and criteria governing payment.

396        (d) A clear and specific transition implementation  
397        schedule that will be implemented in order to complete all  
398        required activities needed to transfer the service or activity  
399        from the state agency to the contractor and operate the service  
400        or activity successfully.

401        (e) Clear and specific identification of all required  
402        performance standards, which must include, at a minimum:

403            1. Detailed measurable acceptance criteria for each  
404            deliverable and service to be provided to the state agency under  
405            the terms of the contract for outsourcing which document the  
406            required performance level.

407            2. A method for monitoring and reporting progress in  
408            achieving specified performance standards and levels.

409            3. The sanctions or disincentives that shall be imposed  
410            for nonperformance by the contractor or state agency.

411        (f) A requirement that the contractor maintain adequate  
412        accounting records that comply with all applicable federal and  
413        state laws and generally accepted accounting principles.

414        (g) A requirement authorizing state access to and audit of  
415        all records related to the contract or any responsibilities or  
416        functions under the contract for state audit and legislative  
417        oversight purposes.

418        (h) A requirement for service organization audits in  
419        accordance with professional auditing standards, if appropriate.

420        (i) A requirement that the contractor interview and

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consider for employment with the contractor each displaced state employee who is interested in such employment.

(j) A contingency plan that describes the mechanism for continuing the operation of the service or activity if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

Section 6. Subsection (6) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.--

(6) A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term. The provisions of this subsection are supplemental to the provisions of ss. 11.062 and 216.347 and any other law prohibiting the use of state funds for lobbying purposes.

Section 7. Section 287.074, Florida Statutes, is created to read:

287.074 Prohibited actions by contractor personnel.--

(1) Only a public officer or a public employee upon whom the public officer has delegated authority shall, consistent with law, take actions, including, but not limited to:

(a) Selecting state employees;

(b) Approving position descriptions, performance standards, or salary adjustments for state employees; and

(c) Hiring, promoting, disciplining, demoting, and



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dismissing a state employee.

(2) Only a public officer shall, consistent with law, commission and appoint state officers.

Section 8. A contractor, as defined in chapter 287, Florida Statutes, or its employees, agents, or subcontractors, may not knowingly participate, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or contractual services by a state agency from an entity in which the contractor, or its employees, agents, or subcontractors, has a material interest.

Section 9. Section 14.203, Florida Statutes, is repealed.

Section 10. For the 2006-2007 fiscal year, the sum of \$1.25 million in recurring funds from the General Revenue Fund in a qualified expenditure category is appropriated and 10 full-time equivalent positions are authorized to the Department of Management Services to carry out the activities of the Council on Efficient Government as provided in this act.

Section 11. The Department of Management Services may implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute. For the 2006-2007 fiscal year, the sum of \$500,000 in recurring funds from the General Revenue Fund is appropriated to the Department of Management Services to implement this program. The Department of Management Services, in consultation with entities subject to this act, shall identify personnel to participate in this training based on requested need and ensure that each

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agency is represented. The Department of Management Services may remit payment for this training on behalf of all participating personnel.

Section 12. Notwithstanding any law to the contrary, a state agency under the individual control of the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture are subject to this act.

Section 13. Paragraph (a) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(5) OTHER PERSONAL INFORMATION.--

(a)1. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes. The Legislature is also cognizant of the fact that the social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. The Legislature intends to monitor the commercial use of social security numbers held by state agencies in order to maintain a balanced public policy.

2. An agency shall not collect an individual's social

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security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented. An agency that collects social security numbers shall also segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number be more easily redacted, if required, pursuant to a public records request. An agency collecting a person's social security number shall, upon that person's request, at the time of or prior to the actual collection of the social security number by that agency, provide that person with a statement of the purpose or purposes for which the social security number is being collected and used. Social security numbers collected by an agency shall not be used by that agency for any purpose other than the purpose stated. Social security numbers collected by an agency prior to May 13, 2002, shall be reviewed for compliance with this subparagraph. If the collection of a social security number prior to May 13, 2002, is found to be unwarranted, the agency shall immediately discontinue the collection of social security numbers for that purpose.

3. Effective October 1, 2002, all social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to all social security numbers held by an agency before,

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on, or after the effective date of this exemption.

4. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

5. An agency shall not deny a commercial entity engaged in the performance of a commercial activity, which, for purposes of this section, means an activity that provides a product or service that is available from a private source, as defined in ~~s. 14.203~~ or its agents, employees, or contractors access to social security numbers, provided the social security numbers will be used only in the normal course of business for legitimate business purposes, and provided the commercial entity makes a written request for social security numbers, verified as provided in s. 92.525, legibly signed by an authorized officer, employee, or agent of the commercial entity. The verified written request must contain the commercial entity's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the normal course of business for legitimate business purposes. The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 8. An agency may request any other information reasonably necessary to verify the identity of the entity requesting the social security numbers and the specific purposes

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for which such numbers will be used; however, an agency has no duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.

6. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Any public officer who violates this paragraph is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. A commercial entity that provides access to public records containing social security numbers in accordance with this paragraph is not subject to the penalty provisions of this subparagraph.

7.a. On or after October 1, 2002, a person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28 may not include any person's social security number in that document, unless otherwise expressly required by law. If a social security number

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589 is or has been included in a document presented to the county  
590 recorder for recording in the official records of the county  
591 before, on, or after October 1, 2002, it may be made available  
592 as part of the official record available for public inspection  
593 and copying.

594       b. Any person, or his or her attorney or legal guardian,  
595 has the right to request that a county recorder remove, from an  
596 image or copy of an official record placed on a county  
597 recorder's publicly available Internet website or a publicly  
598 available Internet website used by a county recorder to display  
599 public records or otherwise made electronically available to the  
600 general public by such recorder, his or her social security  
601 number contained in that official record. Such request must be  
602 made in writing, legibly signed by the requester and delivered  
603 by mail, facsimile, or electronic transmission, or delivered in  
604 person, to the county recorder. The request must specify the  
605 identification page number that contains the social security  
606 number to be redacted. The county recorder has no duty to  
607 inquire beyond the written request to verify the identity of a  
608 person requesting redaction. A fee shall not be charged for the  
609 redaction of a social security number pursuant to such request.

610       c. A county recorder shall immediately and conspicuously  
611 post signs throughout his or her offices for public viewing and  
612 shall immediately and conspicuously post, on any Internet  
613 website or remote electronic site made available by the county  
614 recorder and used for the ordering or display of official  
615 records or images or copies of official records, a notice  
616 stating, in substantially similar form, the following:

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(I) On or after October 1, 2002, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

(II) Any person has a right to request a county recorder to remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. No fee will be charged for the redaction of a social security number pursuant to such a request.

d. Until January 1, 2007, if a social security number, made confidential and exempt pursuant to this paragraph, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (b) is or has been included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number, or by the holder's attorney or legal guardian, in a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of

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the circuit court. The clerk of the circuit court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

e. Any person who prepares or files a document to be recorded in the official records by the county recorder as provided in chapter 28 may not include a person's social security number or complete bank account, debit, charge, or credit card number in that document unless otherwise expressly required by law. Until January 1, 2007, if a social security number or a complete bank account, debit, charge, or credit card number is or has been included in a document presented to the county recorder for recording in the official records of the county, such number may be made available as part of the official record available for public inspection and copying. Any person, or his or her attorney or legal guardian, may request that a county recorder remove from an image or copy of an official record placed on a county recorder's publicly available Internet website, or a publicly available Internet website used by a county recorder to display public records outside the office or otherwise made electronically available outside the county recorder's office to the general public, his or her social security number or complete account, debit, charge, or credit card number contained in that official record. Such request must be legibly written, signed by the requester, and delivered by mail, facsimile, electronic transmission, or in



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person to the county recorder. The request must specify the identification page number of the document that contains the number to be redacted. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for redacting such numbers.

f. Subparagraphs 2. and 3. do not apply to the clerks of the court or the county recorder with respect to circuit court records and official records.

g. On January 1, 2007, and thereafter, the clerk of the circuit court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (b), and must keep social security numbers confidential and exempt as provided for in subparagraph 3., without any person having to request redaction.

8. Beginning January 31, 2004, and each January 31 thereafter, every agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives listing the identity of all commercial entities that have requested social security numbers during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding its need for social security numbers. If no disclosure requests were made, the agency shall so indicate.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

10. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or

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701 created thereafter.

702        11. This paragraph is subject to the Open Government  
 703 Sunset Review Act in accordance with s. 119.15 and shall stand  
 704 repealed October 2, 2007, unless reviewed and saved from repeal  
 705 through reenactment by the Legislature.

706        Section 14. This act shall take effect upon becoming a  
 707 law.